## APPENDIX A

### The Legislative History of the Submerged Lands Act

California asserts that the legislative history of the Submerged Lands Act establishes the validity of the following propositions:

1. The purpose and intent of the Act was to restore to the states submerged lands within their respective boundaries;
2. The seaward extent of state boundaries under the Act is defined in terms of state historic boundaries, subject to statutory limitations;
3. The term "coast line" used in the Act, refers to a line changing in actual location but defined in accordance with historic criteria; and
4. The division of the continental shelf between the Nation and the states under the Act, is entirely a domestic matter.

Excerpts which follow will allude to two committees. The Senate "Committee on Interior and Insular Affairs," Eighty-third Congress, First Session conducted hearings on S. J. Res. 13, which later became the Submerged Lands Act. Those members of the Senate Committee who are hereinafter quoted, are Senators Guy Cordon of Oregon (Acting Chairman), Thomas H. Kuchel (Cal.), Russell B. Long (La.), Price Daniel (Texas), and George A. Smathers (Fla.), all of whom favored the adoption of S.J. Res. 13; and Senators James E. Murray (Montana), Clinton P. Anderson (N. Mex.) and Henry M. Jackson (Wash.), each of whom opposed the measure. Senator Spessard H. Holland of Florida, who was not on this Committee, is generally recognized as the author of S. J. Res. 13, the popular name of which was the "Holland Bill."

Similarly, the House Committee on the Judiciary, at the same Congressional session, conducted hearings on the proposed Submerged Lands Act (as H.R. 4198) and thereafter filed Report No. 215 with the House. Reference will be made to quotes attributable to the following Congressmen: Chauncey W. Reed of Illinois (Chairman), J. Frank Wilson (Texas), Edwin E. Willis (La.) and Woodrow W. Jones (No. Car.), all of whom were proponents of the Submerged Lands Act.

## I

## Excerpts Showing That the Purpose and Intent of the Act Was to Restore to the States Submerged Lands Within Their Historic Boundaries

1. Senator Cordon.

"Mr. President, the probem facing us in connection with this proposed legislation results from three decisions of the United States Supreme Court adjudicating the legal status of lands below the low-water mark outside the inland waters and within the statutory boundaries of the States of the United States having tidal waters along their shores, and from certain language appearing in those decisions which makes uncertain the law with respect to the ownership of lands beneath navigable waters, landward from the areas just mentioned, that is to say, lands beneath navigable waters, inland from those adjoining the open sea, such as in rivers, and in lakes.

"I shall not long detain the Senate with any historical statement of the problem. I merely wish to say that from the beginning of this Nation the States known as littoral States, having boundaries

on the seaward side of the Atlantic Ocean, and later the Gulf of Mexico and the Pacific Ocean, always considered and always believed that as States they owned the lands beneath all the navigable waters within their statutory boundaries. Through the years the States have acted upon that belief.

"From time to time disputes arose among private owners, and on the part of private owners with States, as to whether the land beneath navigable waters within each State was, in fact, owned by the State. Until the California case in 1947, the decisions were uniform; and all were to the effect that the Original Thirteen States, when they created the United States, and the succeeding States, as they were admitted into the Union, became by virtue, first, of their sovereignty as among the Original Thirteen States, and later, as admitted States on an equal footing with the Thirteen Original States, possessed of title to all the land beneath the waters within their several boundaries. No dissenting voice was heard. At no time, Mr. President, was there raised any question as to that ownership.

"Relying upon court decisions—and there were many—and upon administrative decisions—and there were even more of them—the States, from time to time, improved the lands beneath their navigable waters, and, time after time, granted by express conveyance title to portions of the lands beneath such navigable waters. Great ports were created, harbors were improved, and land was made where previously there had been only water. Untold millions of dollars, tens of millions of dollars—

yes, hundreds of millions of dollars—were invested in areas of this character, and vast productive wealth added thereby to the basic assets of the United States.

"This belief held by the States and their representatives, legislative, judicial, and executive, and likewise held, announced, and acted upon by all the executive officials of the United States Government, and enunciated by State and Federal courts alike, led every individual who had ever given any thought to the matter to the conclusion that there could be no question as to the legal status of the submerged lands within the boundaries of the States of the United States." 99 Cong. Rec., p. 2613.

2. Senator Cordon:

"I desire to suggest that the proper approach to the proposed legislation is to have in mind that in our system of Government there are three coequal and wholly separate departments. One department deals wholly with the interpretation and determination of laws. Another department, of which the United States Senate is a part, deals with the making of laws. When equities arise as between the United States and its citizens or member States, the equities as such are not determinable by any court. When a court decides a question with respect to the United States Government, it can only enunciate what it conceives to be and declares to be the law. When our courts determine matters between citizens, they may then go into the field of equity. The courts then are clothed with the chancellor's conscience. But that is

not an attribute of a court when one of the parties before it is the United States of America.

"So, when the Supreme Court had before it a case involving rights to submerged lands, while it recognized the equities and recognized also the vast expenditures, it could do nothing about them but could only enunciate what it took to be the law, and then do as it did, namely, suggest that, so far as equities were concerned, they could be handled by the Congress of the United States. Congress now, in Senate Joint Resolution No. 13, has an opportunity to deal with the equities. That is the position which the senior Senator from Oregon takes on the basic proposition involved in the proposed legislation.

"Mr. Holland. Mr. President, will the Senator yield?

"Mr. Cordon. I am happy to yield to the Senator from Florida.

"Mr. Holland. I thank the Senator from Oregon. I particularly approve of and appreciate what he has just stated with reference to the highly important question of the equities which are here involved.

"Would the Senator be willing to have me read into the Record at this time, to supplement his able presentation on this particular point, the words of the Supreme Court in the California case, almost at the end of the opinion, pointing out just what the Senator has indicated as to the belief of the Court that citizens, States, and other public units of government which might otherwise be prejudiced by the decision of the Supreme Court could

look to the Congress of the United States to do equity as between them?

"Mr. Cordon. I should be happy to have the Senator do so.

"Mr. Holland. I appreciate the courtesy of the Senator, and I shall read those words into the Record at this time:

" 'But beyond all this we cannot and do not assume that Congress, which has constitutional control over Government property, will execute its powers in such way as to bring about injustices to States, their subdivisions, or persons acting pursuant to their permission.'

"I believe that is the portion of the decision referred to by the distinguished Senator from Oregon, in which the majority of the Supreme Court directly called to the attention of Congress, as well as of the public, the fact that Congress was clothed with authority to deal with the inequities which the Court had to disregard, and that the Court believed that Congress would deal justly with any such inequities." 99 Cong. Rec., p. 2615.

3. Mr. Willis in the House of Representatives during the debates on H. R. 4198 summarized the provisions of the bill concerning the Submerged Lands Act by saying:

"First, it restores to the States complete title to the submerged lands up to the limit of their historic boundaries." 99 Cong. Rec., p. 2504.

4. Mr. Fisher.[1] ". . . This bill gives the States nothing whatever. It simply confirms title in the

[1]Congressman O. C. Fisher of Texas, while not a member of the House Committee on the Judiciary, strongly supported the Submerged Lands legislation in the debates on the floor of the House.

States to that which they have always owned—namely the lands within their historic boundaries. . . ." 99 Cong. Rec., p. 2564.

* * * *

Mr. Wilson. ". . . Bear in mind that this is title II, the title that returns or restores this seaward boundary within the historical boundaries of the States. . . ."

"Mr. Halleck. If we stick to the provisions of the bill, then we are just being consistent with respect to the title to the land within the historic boundaries?

"Mr. Wilson of Texas. That is true." 99 Cong. Rec., p. 2567.

5. Senator Cordon. "In short, Mr. President, the purpose of the joint resolution is to create by law a status and a condition which existed, in fact, up to the time of the California decision. What had been done was done under a belief that the law was as the law will be if Senate Joint Resolution 13 is adopted. In the view of the majority of the Committee and in the view of the Senator from Oregon, the joint resolution does simple justice." 99 Cong. Rec., pp. 2618-2619.

* * * *

Mr. Holland. "Mr. President, the subject of Senate Joint Resolution 13 is property, property rights in the submerged lands beneath uavigable waters. By way of a brief summary, the general purpose of this measure as reported by the Interior and Insular Affairs Committee is to recognize, confirm, establish, and vest in and assign to the respec-

tive States the title and ownership of the lands and resources beneath navigable waters within their respective boundaries, . . ." 99 Cong. Rec., p. 2744.

* * * *

Mr. Daniel "Uuder such circumstances, Mr. President, restoration of these lands to the States will not be a gift. One does not give away something he never had. Until recently the Federal Government never thought it owned these lands, and even until now it has never possessed or used them. The lands are still in the possession of the States, awaiting action by Congress on the final question of future ownership. The passage of the pending proposed legislation will simply permit the States to keep what they have always had since the foundation of the Union." 99 Cong. Rec., p. 2830.

* * * *

Mr. Kuchel.

"In recognizing State ownership of lands beneath navigable waters within historic State boundaries, this joint resolution wisely makes no attempt to define exactly what those boundaries are. In substance, the resolution provides that each of the States has ownership of all lands beneath navigable waters extending, in the case of littoral States, 3 geographical miles seaward from its coastline, or to its historic boundary." 99 Cong. Rec., p. 2984.

6. The House Committee Report on the Submerged Lands Act:

"In substance this title [title II of H. R. 4198] determines and declares that it is in the public in-

terest that title and ownership of lands beneath navigable waters within the boundaries of the respective States and of the natural resources therein be in the respective States. . . ." H. R. Rep. No. 215, 83d Cong. 1st Sess., p. 5.

". . . Title II confirms and establishes the rights and claims of the 48 States, asserted and exercised by them throughout our country's history, to the lands beneath navigable waters within the State boundaries and the resources within such lands and waters. . . ." *Id.* at p. 14.

7. "I do believe that the national interest would be best served by restoring to the various States the coastal offshore lands to the limits of the line marked by the historical boundaries of each of the respective States." Testimony of Secretary of Interior McKay, Hearings Before the Commitee on Interior and Insular Affairs, United States Senate, 83d Congress, 1st Sess., on S.J. Res. 13, p. 512 [hereinafter referred to as 1953 Senate Hearings].

8. ". . . The States want, and we believe they are entitled to, all the development rights, you might say, in these submerged lands within their historic boundaries. . . ." Testimony of Attorney General Brownell, Submerged Lands Act, Report from the Committee on the Judiciary, House of Representatives, to Accompany H.R. 4198, House Report No. 215, 83d Congress, 1st Sess., (1953), pp. 219-220 [hereinafter referred to as H.R. Rep. No. 215].

9. Mr. Daniel.

"That is what we propose in Senate Joint Resolution 13. We want Congress to write the law

for the future exactly as it was understood and believed to be during the first 150 years of the existence of this Nation." 99 Cong. Rec., p. 4081.

10. The Senate Committee Report on the Submerged Lands Act states:

"Senate Joint Resolution 13, as amended, determines and declares that it is in the public interest that title and ownership of lands beneath navigable waters within boundaries of the respective States and of the resources therein, be established and vested in the respective States. . . ." Senate Report No. 133, 83d Cong. 1st Sess. p. 5.

"The purpose of this legislation is to write the law for the future as the Supreme Court believed it to be in the past—that the States shall own and have proprietary use of all lands under navigable waters within their territorial jurisdiction, whether inland or seaward, subject only to the governmental powers delegated to the United States by the Constitution." Senate Report No. 133, 83d Cong. 1st Sess., p. 8.

11. "Title II merely fixes as the law of the land that which, throughout our history prior to the Supreme Court decision in the California case in 1947, was generally believed and accepted to be the law of the land; namely, that the respective States are the sovereign owners of the land beneath navigable waters within their boundaries and of the natural resources within such lands and waters. Therefore, title II recognizes, confirms, vests, and establishes in the States the title to the submerged lands, which they have long claimed,

over which they have always exercised all the rights and attributes of ownership." H. R. Rep. No. 215, p. 15.

12. Mr. Jones. "In view of these Supreme Court decisions [California, Louisiana, etc.] the title to not only the so-called tidelands but also the lands beneath the bays, inlets, the Great Lakes, and every navigable stream in our fair land has become clouded. . . ." 99 Cong. Rec., p. 2526.

* * * *

"Mr. Douglas.[2] Is the Senator from Oregon aware of the fact that the decisions of the Supreme Court, in an unbroken chain, have held that title to submerged lands under navigable inland waters rests in the States?

"Mr. Cordon. I have a general knowledge of those decisions.

"Mr. Douglas. Is the understanding of the Senator from Oregon the same as my understanding that title rests in the States?

"Mr. Cordon. I am fully in agreement with that position, but I call attention to the fact that the Supreme Court of the United States, in discussing the California case and the two succeeding cases, raised a very deep concern in my mind, and in the minds of eminent lawyers, as well, and of other persons throughout the United States, as to whether the Supreme Court would go along with the precedents established as to inland water areas if the issue were to be presented again." 99 Cong. Rec., p. 2630.

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[2]Senator Paul H. Douglas of Illinois was one of the leaders of the opposition to the Submerged Lands Act.

## II

## Excerpts Showing That the Seaward Extent of State Boundaries Under the Act Is Defined in Terms of State Historic Boundaries, Subject to Maximum Statutory Limitations

1. To quiet some of the fears expressed by the act's opponents and to aid the passage of S. J. Res. 13, Senator Holland proposed an amendment to strike the word "hereafter" from Sections 2(a)(2), 2(b), and from the last sentence in Section 4 (99 Cong. Rec., pp. 4114, 4116) and to add to the end of Section 2(b) the phrase:

> "'. . . but in no event shall the term "boundaries" or the term "lands beneath navigable waters" be interpreted as extending from the coastline more than 3 geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than 3 marine leagues into the Gulf of Mexico.'" 99 Cong. Rec., p. 4114.

His explanation in support of striking the word "hereafter" in those sections was as follows:

> ". . . In each case, those words, if stricken from the joint resolution, while they would not in the slightest degree take away the jurisdiction of Congress to act in this field if it chose to do so hereafter, would not in the joint resolution itself give any intimation that the Congress is looking forward to any such action being taken. I think nothing is added or subtracted by taking out those words, but certain Senators who are opposed to the joint resolution maintained that the appearance of those words may act as an invitation hereafter

to extend the boundaries, which is not the intention and which I think would not occur.

"I have already stated that, so far as I am concerned, the words are practically meaningless, because Congress has jurisdiction to act hereafter if it sees fit to do so. I have also explained in the Record why the words were used, because the States of Texas and Florida, which were very active in the introduction of the joint resolution, have boundaries extending by law beyond 3 geographic miles, and we did not want to appear in any sense to preclude any of the coastal States which might have a claim about which we knew nothing from asserting it. We do not want to preclude them from presenting their claims. We now want the words to be stricken because they have caused concern in the minds of both proponents and opponents of the joint resolution." 99 Cong. Rec., p. 4115.

Senator Holland in response to a question concerning whether he believed the Supreme Court would treat the act more favorably as a result of his amendment further justified it when he stated:

"I doubt very seriously if that result would occur, because I think the amendment has very little effect. But I am perfectly willing to meet the suggestions of my friends, some of whom have been opponents, and some of whom have been supporters of the joint resolution, to the effect that they would like to have the language more clearly spelled out than it was in the original measure, to the effect that there is no intention whatsoever to grant boundaries beyond 3 geographical

miles in either the Atlantic or the Pacific, and that this Congress knows of no possible situation under which greater boundaries are claimed or could be granted in the Gulf of Mexico than 3 leagues; and, in that case, this Congress knows, although this amendment does not indicate it, that there are but 2 States affected by that particular situation." 99 Cong. Rec., p. 4116.

Senator Holland's amendment was adopted by the Senate.

99 Cong. Rec., p. 4116.

2. Senator Daniel, discussing the aforesaid Holland amendment, stated:

"All such language as 'hereafter approved' was taken out by an amendment agreed to yesterday afternoon as a corrective measure. As the Senator from Florida said, the intention was to write specifically into the joint resolution what the authors have said all along would be its effect—that it covered only land within the historic boundaries. . . ."

99 Cong. Rec., p. 4175.

3. Mr. Holland. "I think it would be fair to state in the beginning that each of the States has boundaries, according to the laws under which they came into the Union, and, except as changed in the very minor ways mentioned in section 4 of the joint resolution, the boundaries are the actual legal boundaries that are more loosely spoken of as historic boundaries. They have become historic because they have been for periods of years the legal boundaries of the several States." 99 Cong. Rec., pp. 4094-4095.

4. Senator Cordon. "We now come to section 4, beginning in line 24 on page 16. I shall read the section, and indicate its application to the remainder of the joint resolution:

" 'SEC. 4. Seaward boundaries: The seaward boundary of each original coastal State is hereby approved and confirmed as a line 3 geographical miles distant from its coastline.'

"That first sentence was inserted for the purpose of settling legislatively the seaward boundaries of the original 13 States, which were, of course, former colonies of the British Crown. They fought for and secured their independence, and were in themselves 13 sovereignties, which organized themselves into a confederation and then into a Union of States. The philosophy of the joint resolution is that, insofar as the legislature can establish them, the seaward boundaries of those States will be established by this resolution." 99 Cong. Rec., p. 2697.

5. Senator Holland: "If the Senator from Alabama will look at section 4 of the joint resolution I shall try briefly to explain this matter, because it has seemed to give unnecessary concern to some Senators. I think a brief statement would clear up the matter for the Senator from Alabama so that there will be no further concern about it in his mind.

"Starting with the statement I have just made, that what we are talking about in the beginning is actual legal boundaries which every State has, some by constitution, some by enabling act, and some by their own statute, let us now examine section 4.

"The first sentence of section 4 makes uniform the matter of boundaries for the Thirteen Original States. The Senator from Alabama has already stated that, and he was correct in his statement. The reason for the necessity of such a statement is that while it is true that under Federal law 3 geographic miles has been uniformly regarded as the extent of a State's jurisdiction, except where Congress has granted a greater distance, the Original Thirteen States have done different things since their entering the Union. For instance, the State of Massachusetts has by statute provided that its boundary is 3 geographic miles offshore. Other States by their constitution have so stated. The State of Georgia has stated, I think, by a constitutional measure, that its boundary is 3 English miles offshore, which, as the Senator from Alabama knows, is nearly one-half a mile less than 3 geographic miles. So, in order to make the yardstick applicable to all of them, and to make them extend out to the limit recognized by the Federal Government as the limit of State jurisdiction, even when a State did not have any formal limits in its constitution or in its statutes, the first sentence is placed in the joint resolution to make it perfectly clear that all the Thirteen Original States have limits of 3 miles offshore." 99 Cong. Rec. p. 4095.

6. Senator Cordon. "On page 17 of the joint resolution the next declaration under section 4 reads:

" 'Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line 3 geo-

graphical miles distant from its coastline, or to the international boundaries of the United States in the Great Lakes or any other body of water traversed by such boundaries—'

"That provision would appear to be self-explanatory, except perhaps as to the last clause, namely—'or any other body of water traversed by such boundaries.'

"That provision is included in the sentence because of a situation such as the one which exists in the State of Washington, where a portion of the international boundary between the United States and Canada follows the thread of the channel of the Straits of Juan de Fuca. It may be that the extension of the State's boundary there might go somewhat beyond 3 miles. In any event, its boundaries would be co-terminal with the boundary of the United States along that international boundary line.

"The next provision is:

" 'Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State so to extend its boundaries is hereby approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line.'

"Mr. President, there is here spelled out the purpose of Congress to confirm the extension of boundaries or any action taken in an intent to extend the boundaires or any action taken in an intent to extend the boundaries in the past, so far as the 3-mile limit is concerned. There is also spelled out that that confirmation is without prejudice to

any claim the State might have, if it has any, to a boundary beyond that. In other words, this joint resolution does not affect that area. It confirms the extension of a boundary, by whatever action taken that would show that intention, out to the 3-mile limit." 99 Cong. Rec. 2698

7. Senator Holland: "The second sentence of section 4 relates to the States which have been admitted since the formation of the Union, of which a considerable number are coastal States, as the Senator from Alabama recognizes. I now turn to the second sentence, and I hope I may have the attention of the Senator from Alabama.

"Mr. Sparkman. I am listening.

"Mr. Holland. The second sentence reads as follows:

" 'Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line 3 geographical miles distant from its coast line, or to the international boundaries of the United States in the Great Lakes or any other body of water traversed by such boundaries.'

"That sentence tries to make applicable to every other State which has either been silent up to this time so far as concerns any formal expression as to where its boundaries are located or, if it has expressed itself and has had a boundary of less than 3 geographic miles laid down, it has the authority, if it has not already done so, to extend the limit to 3 geographic miles.

"One State of that sort is the State of California, which has a provision in its constitution

setting its boundary at 3 English miles off-shore. The provision which I have read would permit the State of California to extend its boundary out of 3 geographic miles. It would apply to a State even in the absence of any constitutional or statutory provision, and it would apply in the exercise of certain kinds of police jurisdiction of the State.

"So, Mr. President, I do not think the second sentence of section 4 is subject to any serious question at all. It means that any State admitted subsequent to the formation of the Union which has not already done so, may extend its boundaries 3 geographical miles distant from its coastline.

"The latter part of the sentence relates to international boundaries in the Great Lakes or in any other body of water traversed by such boundaries. There are bodies of water other than the Great Lakes which are traversed by international boundaries, but that second sentence would allow to States which need to take that action the right to do so, if any such cases exist.

"Mr. Sparkman. If I correctly understand, States included in the first two sentences would be limited to 3 geographic miles.

"Mr. Holland. That is correct.

"Mr. Sparkman. Let us go from there.

"Mr. Holland. The third sentence approves any effort made heretofore, or which might be hereafter made by States that come within the second classification, to move out to their 3-geographic-mile boundary. It reads as follows:

" 'Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State so to ex-

tend its boundaries is hereby approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line.'

"The emphasis in the reading of the third sentence should be upon the words 'so to extend' — to extend its boundaries out to the 3 geographical miles boundary permitted under the second sentence.

"Mr. Sparkman. May I ask if that sentence means that the joint resolution recognizes any action taken by a State to extend its boundaries out 3 geographical miles, but does not necessarily recognize its claims beyond that line; that it simply means that it does not prejudice any rights, if any there be, that a State may have beyond that line?

"Mr. Holland. The Senator is exactly correct." 99 Cong. Rec. 4095.

8. Senator Cordon:

"Earlier this afternoon question was raised as to where the boundaries of these States may be in the sea. My answer then, which I reiterate now, is that the pending measure does not identify the location of those boundaries. It is not within the philosophy of the joint resolution that they be so identified. If they were so identified, that identification would have no legal effect. The joint resolution leaves that question where it found it.

"It is the same question, left open here, that must be left open under any situation which can arise or which could have arisen after the pronouncement of the decision in the California case. When the Court in that case set the boundary of the area of

paramount interest of the United States as adjoining inland waters, that question was raised. It will remain to be adjudicated if we pass no proposed legislation and if we simply stand on the legal effect of the three decisions in the California case, the Texas case, and the Louisiana case. That question will remain for determination if we pass the so-called Anderson bill. It will remain for determination under any conceivable arrangement by which the State retains its sole ownership and rights under inland waters.

"The committee felt that this was a problem which it found unsettled, and a problem which it could not legally settle. Therefore, the committee treated it as it would have to be treated in any event, and left it there. That is my complete answer regarding all seaward boundaries of all States." 99 Cong. Rec., p. 2632.

## III

## Excerpts Showing That the Term "Coast Line" Refers to a Line Changing in Actual Location but Defined in Accordance With Historic Criteria

1. Senator Cordon. "I am very sorry, but I cannot go along with the [Long] amendment.[1] It seems to be a general change in the philosophy of the bill, and intended to correct now what was done when the State came into the Union in a way that, for instance, would do violence to all the

[1]Senator Long was concerned with erosion which had taken place on the Louisiana coast since that State's admission. Hence, he proposed an amendment which would have allowed a measuring of three geographical miles from the coast as it existed at the time of a state's entry into the Union. (1953 Senate Hearings, pp. 1333-45, 1353-58.) This amendment was not pressed.

original coastal States. The language in section 4 as it is now was requested by the original States; and it is the philosophy of the law that was built up with respect to those States, and their political history, that in my mind justify this bill. The language here with reference to those original coastal States is:

" 'The seaward boundary of each original coastal State is hereby approved and confirmed as a line 3 geographical miles distant from its coast line.'

"If we are going to set that line today in the law and if the law requires some degree of certainty, we have to have something to measure from now. Those who prepared the bill over the years took the view—and that is the way the bill is before us—that 'coastline' means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters. That is in the present tense. It is the coastline as of now. We have confirmed here 3 miles from the coastline as of now. We have endeavored here to protect the equities of each State as they were when it became a State. Under the philosophy of this bill that time should be the time of the creation of rights and equities—and I distinguish between the two. It is the equities we are now attempting to preserve; and we provide, in order to do that, that we shall either measure from the coastline of today or take the original line.

"If we attempt now to discuss a coastline of 1783, or whenever the Revolutionary War was con-

cluded and the treaty was signed—and I do not just now recall the date—if we attempt now to determine a coastline as of then, it would seem to me that we increase our difficulties beyond what, as I understand the bill, we envisioned in the first place, but which we left where they were.

"There are difficulties with respect to the boundary lines that are defined by statute, but at least we have them. If we attempt now by an arbitrary 3-mile limit to permit the extension of lines, and if we attempt to go back to those days to do it, we have created a regular Pandora's box of troubles around the line of the United States wherever there was not a clear seaward statutory line made in the Act of Admission or in the Constitution which was the basis for the Act of Admission.

"It seems to me—and I am discussing now just the case of Louisiana—that the philosophy of the law down through the years until reversed, first in the California case and thereafter in the Texas and Louisiana cases, was that each State had a right to come in with territorial sovereignty over the areas 3 miles from its coastline. That is the philosophy.

"On the basis of that, we have drawn a bill in which we permit each State, by action approved in this bill, to extend its boundary of record, so there can be no jurisdictional question with reference to the application of all the laws of the State to a given and certain point. If we now attempt to define that term 'coast line' in terms of its location at the time the States came into the Union, I do not know how there could be

certainty with reference to the line until there is a judicial decision, and of course that would mark it.

"Senator Long. Here is what is going to happen, Senator Cordon, if you do not accept this amendment. If we must rely upon the rights in this bill as far as our boundaries are concerned, if the State finds itself in position that the so-called 10-mile boundary does not apply, it would be argued under title I, section 2, under the definition of 'lands beneath inland waters,' that it possessed the land within 3 miles of its boundary as it existed when the State came into the Union.

"On the other hand, if the theory should be advanced that inasmuch as nothing was said about a 3-mile limit when it came into the Union, that is the reason that original States had their lines fixed at 3 miles here, to clear up that doubt, then the State would be in the position of having someone argue against it that the 3-mile limit is established as of now. So in title I, section 2, we have our line fixed from the historic line; and in section 4 we would have our line fixed from the present line.

"Senator Cordon. By this act you have granted to the State of Louisiana whatever it had when it came into the Union. Louisiana has, at its election and option, an additional right. It may rest upon its original line if it so desires, or under the authority on page 10 in section 4, it may extend its line under the authority of that section to a point 3 miles from its coastline as of now. It has both rights. One right is granted here. It may rest

upon it or, if it desires not to rest upon it and take advantage of the provisions in section 4, it may extend its line. But then, in that extension, it is in the position of adopting a line from a known and presently existing coastline. It has both rights under the law.

"Senator Anderson. I think, Mr. Chairman, it is important to get that in the record, because there may be some legislative history being made here. When you have clearly stated that Louisiana has these two options, and then if the Senator from Louisiana does not offer his amendment or, if he does offer it, it is voted down, I believe under ordinary legislative history procedures Louisiana would have the protection that you have outlined here, regardless of what some Government official might subsequently contend.

"I am sitting here looking at a map showing where the leases have been granted in Texas and Louisiana, both prior to and subsequent to June 23, 1947; and if I am not mistaken, a good deal of the land that lies south and east of New Orleans is made land. If Louisiana wants to have the advantage of all that made land around which there has been a great deal of leasing activity, then naturally it has to be limited by whatever has happened to this other land. If it wants to take its original boundaries and include them, it has that right.

"It seems to me that that is all it really needs, provided it is well understood that it does have both those options and can accept one or the other of them.

"Senator Cordon. That substantially is the view of the chairman under the philosophy and theory upon which the whole bill rests. I do not believe that the position of Louisiana is in the slightest prejudiced under the language here, and I am equally—I will not say I am equally certain—I am very gravely doubtful if we would not cause a great deal of difficulty and a great deal of confusion if we attempt now to tie rights to a coastline with respect to which generally there might be a very difficult problem of proof but which would still be binding on the other States because it goes into a definition that is applicable around the coastline of the United States." 1953 Senate Hearings, pp. 1354-1356.

2. Mr. Long. "Mr. President, I regret that I was not present at the time the senator from Oregon touched upon the definition of the term 'coastline.' I should like to call his attention to page 18 of the committee report, which refers to the fact that certain words were stricken in connection with the term 'inland waters.' The words 'which include all estuaries, ports, harbors, bays, channels, straits, historic bays, and sounds, and all other bodies of water which join the open sea' were stricken at the request, I believe, of the Department of Justice, and also on objection by the State Department.

"In striking those words the committee attempted to make clear in its explanation that it is not committed to any particular formula for the determination of inland waters, and it made clear that it does not believe that either the United States Gov-

ernment or a State government is bound by the so-called Boggs formula, which would provide, in effect, that if there can be drawn across a bay a line of exactly 10 miles, the waters would be regarded as inland waters, but in the case of a bay of the same relative shape if a line drawn across its mouth would be 10½ or 11 miles, it would not be regarded as inland waters. Such a formula was rejected by the committee, and the committee made it clear that it did not intend to accept a rule of 3 miles or 10 miles across a bay to deterime whether it was a bay." 99 Cong. Rec. 2633.

3. Senator Cordon. "The Chair submits that the purpose of striking the language was to put the Congress in a position of not having to determine matters that are highly technical.

"The elimination of the language still follows what the Chair understands to be the philosophy of the bill, that we are putting the States where they thought they were, and not attempting now to create either a situation in law or a basis for a rule of evidence that may or may not have been sound when the States came into the Union. I believe that the elimination of the language does that. I believe that it will not prejudice any State on account of anything in this bill.

"It may not do as good a job for some State as it would if the Congress legislatively met the State's contention and agreed with it. But, as I understand it, what we seek to do is neither to agree nor to disagree, but to announce legislatively that we seek to place the States in the position the States believed themselves to be prior to the Cali-

fornia decision, and to leave to them at the same time every remedy in the courts of this country that they then had or thought they had with reference to what they thought was theirs.

"Senator Daniel. Mr. Chairman, I would vote for Senator Long's amendment if it is offered, but I agree fully with the chairman that the striking of these words was not done in any manner to prejudice the rights of the States, and that the effect would not be to bind us to the Boggs formula or anybody else's formula. I just want to state that for the record, if this record is ever used in the future." 1953 Senate Hearings, pp. 1383-84.

4. "Senator Cordon. That has to do with the definition of bays, Senator. Generally speaking, as I recall the testimony, the maritime practice internationally and the contentions that have been made over a long period of years by this Government are to the effect that a strait is high seas if it joins on both ends the high seas. One reason that was advanced for the position there taken was the Straits of Magellan at the south end of South America, which is the regular passage for ships going from the Atlantic to the Pacific. Of course, that, like many other definitions, was a definition, I suspect, in the first instance, of necessity. Whether that should be a fixed definition, all-inclusive, would appear in my mind to be debatable.

"There could be such a thing, of course, as a sound connecting with the open sea. As a matter of fact, there is a so-called sound along, I believe, the west coast of Florida that has several connections with the open sea, and yet it could not be

deemed in any sense a part of the high seas because it is almost entirely enclosed except for slight passages. Am I correct in that, Senator Smathers?

"Senator Smathers. You are correct.

"Senator Anderson. Long Island Sound is inland waters.

"Senator Jackson. The reason I raise this question is that there has been no definition here of a bay or a strait.

"Senator Cordon. It was sought not to get into that field because you were in a field then where, in our attempts to take care of a purely domestic matter, we might be putting the United States on record with a precedent which we intended only to apply domestically but which might be applied internationally. That was my understanding of it, and the reason that I felt there was sound reason for excluding all of these words. I do not like to exclude 'straits' if there had beeen [*sic*] straits, so-called, which are not simply broad seaward connections between the open sea on one side and the open sea on the other. I do know that there are bodies of water that are called straits that do not meet that definition." 1953 Senate Hearings, *supra*, pp. 1377-1378.

5. Senator Daniel. "I would like just to make the observation that if you strike those words as Senator Long has suggested, leaving the remainder, you will be leaving exactly the criteria set by the United States Government in the hearing before the master in the California case as to inland waters. I do not believe you would be including a things [sic] as inland waters that he did not

include. They will, of course, say that any bay wider than 10 miles is not a bay, unless you can show it is a historic bay. But the general principle of the rule laid down by the Government itself would be in accordance with this definition of inland waters that we would have after striking 'straits' and 'channels.'

"Senator Anderson. Mr. Chairman, if we are really concerned with what the Government wants to do, why do we not pay some attention to what the Government has asked us to do in this? I am not talking about previous administrations. Why do we not follow what the State Department has asked us to do in this particular case? The State Department did not ask us to strike it out. It has a simple amendment that would cover the situation fairly well.

"Senator Long. Might I voice this one objection, Mr. Chairman. I believe that the Congress of the United States has every bit as much responsibility in defining what the boundaries of this Nation happen to be as does an official in the State Department. We do not want to be put in a position where we have to rely entirely upon what one man in the State Department might want to set down as the standard to determine what is a bay. We would rather let the court look at the word 'bay' and say that it is a word that an ordinary human being can understand, rather than simply have to rely entirely upon having this geographer over here—and he is a good one, one of the best, but we can get some good geographers—to come in and say 'If Mr. Boggs says it is a bay, that settles it. If Mr. Boggs

says it is not a bay, that settles it. It is not a bay.' We would like to bring in some of our geographers who have good reputations, too, and say, 'Here is a man whose qualifications are in line with Mr. Boggs, and we would like at least to urge that this is a bay or that it is a historic bay or that it is a sound or that it is an estuary.' We would not like to have it entirely put on the basis that this official over in the State Department ought to say entirely what the boundary is, and that is it.

"We think the Congress ought to say if it is a bay. Certainly that is a word that a court can understand. If it is a bay, then that is inland waters. If it is not a bay, then, of course, you have to prove it is something else if you want to claim it is inland waters. You have to claim it is a historic bay or that it happens to be a sound or an estuary." 1953 Senate Hearings, pp. 1379-1380.

* * * *

Senator Long. "Mr. Chairman, I believe that you will find that the report of the master in the California case was in effect that he had no standard whatsoever to go by, and without any standard whatsoever, about all he could say was what Mr. Boggs set down as his formula. Yet the State Department testifies that all estuaries, harbors, bays, historic bays, and sounds ought to be inland waters. . . ."

"I would just like to submit something that has happened off my coast. We are entitled to our historic boundaries. There is an area named Bay

Marchand that was dry land when we came into the Nation, and we can show that that bay was dry land in 1812. We have Federal patents where the Federal Government patented that to us. Yet the sea has cut in there and made something of a bay out of it.

"Mr. Boggs came down there and, advising with the Interior Department and not for a moment advising with an official of our State, said that because as it is today he cannot find that there is sufficient depth in the bay to meet his theory that a bay ought to go back a sufficient distance so that the depth equals half the width, because he cannot find any islands in there to keep you from having less than a 6-mile crossing in that area—I believe he uses the 10-mile theory if you have as much as half the depth, but if you do not have half the depth, then I think there is a question of whether 3 miles ought to intercept—the Interior Department set out a map to show what the Federal Government takes, and they draw a line taking the whole thing, where it used to be dry land of the State of Louisiana.

"If we put some standard in here, if we are subjected to the same thing we had to be subjected to under the Truman administration, they will have some standard to go by rather than just have a Federal edict laid down where you cannot even argue the question. That is about what it amounted to.

"I do think that we ought to say it." 1953 Senate Hearings, p. 1381.

6. Senator Long. "In view of the fact that this amendment did not carry, I think the bill should either state that we are bound by the Boggs formula or that we are not bound by it. Since it is the chairman's view that we are not bound by such formula, I would like. . . .

"Senator Cordon. There is no question in the chairman's mind as that we are not bound by any opinion, expert or otherwise, that is not comprehended in the statutes of the United States or in the decisions of its courts.

"Senator Long. Then I should like to work with the chairman in preparing some amendment that would make that clear, if language to that effect can be worked out, and I would hope that the chairman would instruct our committee staff to attempt to work out some language that would make it clear that we are not bound to any particular formula.

"Senator Cordon. The Chair would suggest that a report which the Chair hopes and expects will be explanatory of the action taken in this committee would be the proper place for any such statement or declaration, rather than in the law.

"Senator Jackson. Mr. Chairman, I take it that this vote does not add to or detract from the position taken by the gentleman from Louisiana; that it is the feeling of the committee that the language is not needed.

"Senator Cordon. That is the feeling of the Chair, too. The Chair feels that there could be instances where it might even be prejudicial.

"Senator Jackson. I want to make that statement for the record, in view of the vote.

"Senator Anderson. I think my position is clear in the record: that I do not regard the Boggs formula as being confirmed or denied or involved in the action we have just taken, nor do I regard the Boggs formula as being binding at all upon any of these States. I subscribe fully to what the chairman said quite awhile ago in pointing out that this bill does not seek to take away from or add to the position of these States as they came into the Union." (Emphasis added.) 1953 Senate Hearings, p. 1385.

7. An earlier House Report stated:

"3. Geographical questions in the determination of inland water boundaries.

"Whether a particular indentation constitutes a bay or whether particular channels should be designated as inland waters must be considered in relation to the geographic character of the particular coast line and coastal area in which it occurs. For instance, suitable shelter for ports and harbors are relatively rare on the Pacific coast in contrast to the many which exist on the Atlantic shore. On the Pacific coast where places of shelter are at a premium it may well be vital to designate every useful indentation as a bay or harbor within the exclusive jurisdiction of our Nation. Other geographic factors such as prevailing wind, temperatures, tides, and wave action may also have a bearing on whether any given indentation or channel should be designated as inland waters.

"The proximity of neighboring nations is another geographic factor which should guide our determination of our seaward boundaries. Where we have maritime neighbors only a short distance across an ocean or other body of water, sound diplomacy may dictate that we make a more modest claim as to our seaward boundaries than we would where there is a vast expanse of ocean between our Nation and its Maritime neighbors." House of Representatives Report No. 2515, 82d Congress, 2d Session, p. 19 (1953).

## IV

## Excerpts Showing That Under the Act the Division of the Continental Shelf Between the Nation and the States Is Entirely a Domestic Matter

1. Senator Jackson. "What I am getting at is, How far can Congress go in delegating and granting to the States functions and rights beyond the 3-mile limit as the 3-mile limit is recognized today by the United States and the family of nations?

"Mr. Tate.[1] I think I would have to say that, Mr. Senator, that as far as the international community is concerned and international relations, international law, it is not imperative that it be done either way. What the domestic arrangement might be under the Constitution is a constitutional question on which I am not competent.

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[1]Jack B. Tate, Deputy Legal Adviser of the Department of State appeared at the request of the Senate Committee on Interior and Insular Affairs and testified extensively with respect to "the international aspects of the submerged lands problem" and the possible effect of submerged lands legislation "upon the conduct of foreign affairs." 1953 Senate Hearings, p. 1051.

"Senator Jackson. You want to confine your answers entirely to the international field.

"Mr. Tate. Your question is one that would go to the Department of Justice.

"Senator Jackson. I respect your answer on that.

"The third question:

"To what extent would the proposed legislation conflict not only with the exclusive constitutional right the Federal Government has over the area beyond and within the 3-mile limit but also with obligations and responsibilities that the Federal Government has by reason of international law, treaty, customs, and usage?

"Are there any treaties, and so on, that might be violated?

"Mr. Tate. I have not made a review of all of our treaties, but the assumption in some of our treaties and the explicit statement in some of our treaties support the 3-mile limit.

"Senator Jackson. By implication at least, reference is made to a 3-mile limit possibly in some of the treaties.

"Mr. Tate. That is right.

"Senator Jackson. So if we attempt to grant authority and jurisdiction beyond the 3-mile limit, we might find ourselves in violation of our own treaties entered into by the Government?

"Mr. Tate. It depends upon what authority and jurisdiction you should grant. We have taken the position that whether this exploration of the seabed is done by the Federal Government or the State governments is not a matter that is of interna-

tional concern, nor is it a matter that, as far as I know, would conflict with any of our treaty obligations.

"Senator Jackson. It gets down to a matter of degree, then, in some cases.

"Mr. Tate. If we attempt to extend our territorial waters out to the edge of the Continental Shelf, as we have attempted to extend jurisdiction and control for purposes of exploration of the seabed, it would certainly conflict with our international position and cause us trouble in the international community.

"Senator Jackson. I think that is all, Mr. Chairman.

"Senator Cordon. The Chair would like to ask one question here for the purpose of clarification. Is the Chair correct in the understanding that the witness has said in his answer to Senator Jackson that the utilization of the sea bed for the purposes of extracting values therefrom on the Continental Shelf, which right has been proclaimed by the President, is a use of the seabed of the Continental Shelf with respect to which the matter of whether the use be limited to the Government of the United States or by transfer from the Government of the United States by any of the several States, is not in the opinion of yourself and of the Department, as you understand it, an international question?

"Mr. Tate. The Chairman is correct in that statement." 1953 Senate Hearings, pp. 1066-1067.

2. "Mr. Tate. I am not familiar with the Attorney General's testimony, but I would say as to that, Senator, that the United States claims the right of exploration and exploitation of the seabed and subsoil out to the extent of the Continental Shelf. If the United States Congress decides that that exploitation should be done by the States rather than the Federal Government, then I would assume that they could transfer that right of exploitation to the States, and the United States might do that the same for all States or differently for different States.

"Senator Kuchel. Using that language, which I assume would avoid any phraseology which could be interpreted as conveying title to the States involved, the language would clearly give to the United States the title to whatever minerals were developed under State law?

"Mr. Tate. As far as the international aspects of the thing are concerned, I think that is correct." 1953 Senate Hearings, p. 1068.

3. Senator Long. "As I understand your previous answer, it is your feeling that with regard to the taking of natural resources from the land beneath the surface on the Continental Shelf, that that matter is one of domestic decision insofar as the Government is concerned?

"Mr. Tate. That is right.

"Senator Long. In other words, if this Government should in its wisdom decide to do so, it may permit the States to exercise some jurisdiction in regard to that? If the Government decides not to, it may exclude the States from exercising jurisdiction in that regard?

"Mr. Tate. I think the rights can be distributed between the Federal Government and the States in any way at all and would not impinge upon our relations with other States.

"Senator Long. In other words, it is of no concern to any foreign power whether the oil taken beyond the 3-mile limit goes all to the Federal Government, all to the States, or on some formula that permits sharing between the two?

"Mr. Tate. That is correct.

"Senator Long. In other words, it is a matter for Congress and the Executive to decide?

"Mr. Tate. That is right.

"Senator Long. The same thing is true with regard to all matters within the 3-mile limit; is it not?

"Mr. Tate. Yes, I think that is true. You qalified [*sic*] your first question by referring to the bays of the sea and the subsoil. That would be true in the 3-mile limit as to the bays of the sea and the subsoil, and any other rights that the United States has.

"Senator Long. Right. About the only limitation of the sovereignty of the Federal Government and the extent to which it could share its sovereign power with the States in the 3-mile limit, so far as I have determined to this point, is that vessels forced into the marginal belt by storm or act of God or distress have a right to seek haven under certain conditions. Do you know of any other qualifications that exist with regard to international complications concerning the 3-mile belt?

"Mr. Tate. The principal one is the right of innocent passage." 1953 Senate Hearings, p. 1070.

4. Senator Long. "With regard to Thomas Jefferson's position that the marginal belt of this nation started 3 miles from low tide, did that have any bearing upon the domestic relationship between the States and the Federal Government?

"Mr. Tate. That was a claim on behalf of the Federal Government, as I understand.

"Senator Long. That was only a claim that the marginal seas of this nation extended at least 3 miles out.

"Mr. Tate. That is correct.

"Senator Long. As a matter of fact, was not that decision made with regard to a request by the British Ambassador to define the marginal belt, inasmuch as this Nation was protesting the British seizure of French ships and French seizure of British ships within the marginal belt?

"Mr. Tate. I believe that is correct. Of course, Mr. Jefferson's claims could only be made on behalf of this Nation vis-a-vis other nations. He would not have purported to have settled the question as between the Federal Government and the State governments." 1953 Senate Hearings, p. 1073.

5. Senator Daniel. "Now, let us get into this matter of the lands beyond territorial waters. I think I am certainly in perfect agreement with you there. I have upheld the claims of the United States to the seabed and subsoil in various meetings, including the International Law Association in Copenhagen 2 years ago, where I tried to de-

liver a paper on the subject. I have been really worried about the timidity with which our Nation faces this problem of the seabed and subsoil beyond territorial waters. I think you have explained it to the committee. Let me see if I understand it fully.

"You feel that our Nation can have exclusive jurisdiction and control over the seabed and subsoil out to the edge of the Continental Shelf so long as we do not interfere with the overlying waters; is that not correct?

"Mr. Tate. That is the basis of the 1945 proclamation; yes.

"Senator Daniel. The 1945 proclamation of President Truman uses these various terms:

" 'Whereas recognized jurisdiction—' " those are the two words I am emphasizing—" 'over these resources is required in the interest of their conservation and prudent utilization when and as development is undertaken; and

" 'Whereas it is the view of the Government of the United States that the exercise of jurisdiction over the natural resources of the subsoil and seabed of the Continental Shelf by the contiguous nation is reasonable and just, since the effectiveness of measures to utilize or conserve these resources would be contingent upon cooperation and protection from the shore, since the Continental Shelf may be regarded as an extension of the land mass of the coastal nation and thus naturally appurtenant to it * * *.'

"He goes on and finally declares what he does as President of the United States, and says this country considers:

"'* * * the natural resources of the subsoil and seabed of the Continental Shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control.'

"I have a Webster's Dictionary, which defines 'jurisdiction' as 'authority of a sovereign power to govern or legislate or control.'

"Do you not actually believe that, as far as the effect of this proclamation is concerned, we actually have asserted sovereignty over the seabed and subsoil, not the overlying waters, but the seabed and subsoil of the Continental Shelf?

"Mr. Tate. Senator, what we asserted there was jurisdiction and control. Jurisdiction and control, as far as the seabed and subsoil are concerned, I think could be said in most respects to be tantamount to sovereignty. If we asserted sovereignty in the classical concept of sovereignty, it would be sovereignty that goes down from the surface and goes up from the surface. I think because it did not go up through the water into the sky was one of the principal reasons why we did not assert sovereignty.

"Senator Daniel. I think you have made an excellent statement. If you limit our assertions just from the seabed down into the subsoil, we asserted sovereignty, would you not say?

"Mr. Tate. We certainly asserted 50 percent of sovereignty.

"Senator Daniel. I am excluding everything above the seabed, you see, all the water and airspace.

"Mr. Tate. I do not know whether you can speak in terms of absolute sovereignty. The only reason I hesitate, Senator, is that I do not know that you can speak in terms of absolute sovereignty when you qualify your sovereignty by only running it down and not running it up.

"Senator Daniel. I understand why you hesitate there. I think that you have explained your position on that fully.

"As far as jurisdiction and control, whatever sovereignty we have asserted, do you feel that the domestic law of our Nation can apply to it?

"Mr. Tate. That is correct.

"Senator Daniel. And that jurisdiction, if the Congress wants to allow it, jurisdiction for certain purposes could be given to the States over that area the same as over the lands beneath their territorial waters?

"Mr. Tate. As far as our international relations are concerned, I think that is correct." 1953 Senate Hearings, pp. 1078-1080.

6. Senator Murray. "It seems to me it would be important for the State Department to look into that. Will you examine into those negotiations between Texas and the United States which resulted in that act of Congress which Texas agreed to, which undertakes to delineate the boundaries of Texas?

"Mr. Tate. Senator, I think that the matter of the boundary of Texas is between Texas and the United States Federal Government, and is not a matter on which the State Department should attempt to pass. I think that would be a matter for the Attorney General.

"Senator Murray. Would it not have a bearing on the administration under the State Department with reference to the high seas and the jurisdiction in the offshore areas from Texas? I understand that the United States does not recognize the Treaty of Guadalupe Hidalgo as fixing the seaward boundary of Texas.

"Mr. Tate. That is correct. The United States recognizes the treaty as setting the boundary as between Texas and Mexico. I do not think the State Department has had occasion to pass on the question as to the territorial waters claimed by Texas vis-a-vis other nations because of Guadalupe Hidalgo. We have as far as Mexico is concerned. The treaty only purports to set a boundary as between the United States and Mexico. We recognize that that boundary has been set by the treaty, but I think we have not had to pass on the question of what are the territorial waters because of the treaty.

"I would think that that matter between Texas and the United States would be a matter for the Attorney General and the Department of Justice, not for the Department of State." 1953 Senate Hearings, p. 1081.

7. Senator Kuchel. "If the United States has paramount rights, specifically in the case of Louisiana, 27 marine miles seaward of the low-water mark of the State of Louisiana, then I ask if there is any conflict between that holding of the United States Supreme Court and the traditional position of the State Department?

"Mr. Tate. I assume what the Court was saying there was that as far as the territorial waters are

concerned, 3 miles anywhere, the United States had paramount right; and as far as the continental Shelf rights are concerned, there would be paramount rights in the subsoil and the sea bed, and they would extend out as far as the Continental Shelf extended.

"Senator Kuchel. So you would find no conflict between the traditional policy of the State Department and the paramount rights holdings in the Texas and Louisiana cases?

"Mr. Tate. I am aware of none.

"Senator Kuchel. If there is no conflict, then for the purpose of the committee in considering the claims of the States in these various bills, any action by Congress to restore or give to the States any or all of the paramount rights which the United States Supreme Court holds that the Federal Government has, would not in any respect violate the policy of the State Department.

"Mr. Tate. That is correct. I assume that as far as our international relations are concerned, the United States could divide up with the States any rights which it had, and those rights would be certainly the traditional right to the 3 miles, plus the rights to the Continental Shelf as set forth in the 1945 proclamation.

"Senator Kuchel. And to the extent that the Court held in each of those cases that the paramount rights doctrine went considerably seaward of the 3-mile-belt?

"Mr. Tate. Whatever the United States has as far as the international aspect is concerned, it may divide up with the States as it pleases." 1953 Senate Hearings, p. 1086.

8. Mr. Holland.

"I should like to ask the distinguished Senator two questions with reference to matters which I think are significant contributions to the debate.

"First, with reference to the first paragraph on page 14 of his prepared address, I notice that the distinguished Senator from California has quoted Mr. Tate, the Deputy Solicitor of the State Department, who appeared before the Senate committee on a subject which I do not believe has been emphasized in the debate up to this time, and which I think is of very great importance.

"I note that the quotation from Mr. Tate's testimony placed in the Record by the distinguished Senator is that part of his testimony in which Mr. Tate made the comment that—

" 'I assume that as far as our international relations are concerned, the United States could divide up with the States any rights which it had, and those rights would be certainly the traditional rights to the 3 miles, plus the rights to the Continental Shelf as set forth in the 1945 proclamation.'

"My question is this: Is it not the understanding of the distinguished Senator from California that by the testimony of the able Deputy Solicitor of the State Department it was made completely clear that there is no jeopardy of any kind arising in the international field from the division between the States and the Federal Government of all or any of the proprietary rights in the submerged Continental Shelf which the United States has under the law as it now exists?

"Mr. Kuchel. The Senator from Florida is completely correct. That was the tenor of the tes-

timony to which we listened in the hearings before the committee. I wish to add, if I may, that I thank my friend the distinguished Senator from Florida for his comment, personal to me, which I know is not deserved, but which I appreciate very much.

"Mr. Holland. It is a great pleasure to a native son of Florida to pay a deserved compliment to a distinguished son of the Golden State.

"To repeat the question in a little different form, is it the understanding of the distinguished Senator from California that so long as the pending measure or any other legislation on this subject addresses itself insofar as the Continental Shelf is concerned, solely to the division between the States and the Federal Government of proprietary rights now belonging to the Federal Government or claimed under the doctrine of paramount right in the Federal Government, there is absolutely no dangerous implication in the field of international relations in the opinion of the State Department?

"Mr. Kuchel. The Senator from Florida is again correct, and I wholly agree with that statement. As he has suggested, that again was the tenor of the testimony before the committee.

"Mr. Holland. If the Senator from California will further yield, I wish to say that his well-made point should go very far toward eliminating one of the false issues which has been so repeatedly urged on this floor, to the effect that something disturbing our relations with foreign governments was involved in the measure, whereas now we are told by the witnesses appearing officially for the State Department that no such thing is the case.

so long as the legislation confines itself, as it does, in dealing with the offshore areas, to rights now owned by or belonging to, or held under the paramount rights doctrine by the Federal Government." 99 Cong. Rec., p. 2986.

9. Mr. Daniel.

"As stated by the Senator from Minnesota [Mr. Humphrey], his contention, and the contention of the Supreme Court in its 3 recent opinions, is that the Federal Government has inherent powers of external sovereignty not given to it by the Constitution of the United States, and that those inherent powers of external sovereignty should be applied in the present domestic dispute within the borders of the United States.

"So that there may be no mistake about it, the lands within the 3-mile and 3-league boundaries are within the Nation and within the States. They are within the United States the same as any of the dry land of the continent. That is the theory of the State Department; and when the Senator from Minnesota [Mr. Humphrey] argues that inherent sovereignty in external affairs, based upon the dictum in the Curtiss-Wright case, should apply to lands within the borders of this country, he is trying to apply international law and external sovereignty to the domestic affairs of the Nation.

"The Secretary of State sent a representative, Mr. Tate, to appear before our committee. He testified before the Senate Committee on Interior and Insular Affairs that the area referred to, within our territorial waters, is a part of our Na-

tion, just as all the other territory within our boundaries. His testimony will be found at page 1074 of the hearings. I questioned Mr. Tate, and he replied as follows:

" 'Senator Daniel. Mr. Tate, right along the line that Senator Long was questioning you about as to the lands within our territorial waters, using your theory of the 3-mile limit for the purpose of this question, as I understand it this country recognizes that that area is part of the United States.

" 'Mr. Tate. That is correct.

" 'Senator Daniel. The same as its land territory.

" 'Mr. Tate. That is correct.

" 'Senator Daniel. And domestic law applies.

" 'Mr. Tate. That is correct.

" 'Senator Daniel. As Wheaton said in his book on Elements of International Law in 1836, "Within these limits," that is, out to the limit of the territorial waters, "a country's rights of property and territorial jurisdiction are absolute and exclude those of other nations." Is that correct?

" 'Mr. Tate. That is correct.

" 'Senator Daniel. That is the view of this Nation?

" 'Mr. Tate. That is correct.'

"Mr. President, this view was further expressed by the United States at The Hague Convention in 1930, at which this Nation agreed that—

" 'The seabottom and subsoil covered by the territorial waters, including fish and minerals, are the property of the United States or of the individual States where they border.'

"In other words, Mr. President, it is clear that as to the area within the boundaries of the States 3 miles from shore and 3 leagues in the case of Florida and Texas, recognized by Mr. Tate later in his testimony, the lands are within our country, and domestic law shoud apply. But what would the Senator from Minnesota have us apply? Contrary to the majority leader, the Senator from Minnesota would apply, not the Constitution or domestic law but external law and international law on the basis of the dictum in the Curtiss-Wright case. The Senator from Minnesota argues that the States were never sovereign; that the proprietary rights of the Crown passed to the Nation instead of the individual States." 99 Cong. Rec., pp. 4074-4075.

10. Senator Cordon: "The purpose clearly is to enunciate as emphatically as can be done that the paramount rights of the Federal Government in its constitutional field of controlling and regulating rivers, in national defense, and in international affairs cannot be interfered with by any situation created under the resolution. The resolution seeks to transfer, establish, and vest in the States interests which in themselves are proprietary in character but in no sense governmental. These interests are made subordinate to the paramount rights of the United States." 99 Cong. Rec., p. 2618.

11. Congressman Reed:

"If the State is permitted to take over these lands for the purpose of developing and extracting

oil therein, and if the constitutional powers of the Federal Government are specifically reserved unto itself upon condition that nothing in the grant of powers to the State can in any way infringe upon those Federal powers, there can be no possible conflict, no surrender of the right to control navigation, the right of national defense and the right to conduct foreign affairs." 99 Cong. Rec., p. 2501.

# APPENDIX B.

## SUMMARY OF PHYSICAL AND HISTORICAL EVIDENCE PERTAINING TO WATER AREAS IN CONTROVERSY BEFORE THE SPECIAL MASTER.

### INTRODUCTION.

In this Appendix, we shall summarize factual and historical evidence pertaining to the following areas which were in controversy before the Special Master:

1. The Santa Barbara Channel and California's Over-All Unit Area of Inland Waters.
2. San Pedro Bay.
3. Santa Monica Bay.
4. The Crescent City Segment.
5. Monterey Bay.
6. San Luis Obispo Bay.

This evidence is in support of California's contentions (a) that the areas in question are within California's historical boundaries as defined in its 1849 Constitution and (b) that the areas in question qualify as inland waters under international law.

I.

## THE SANTA BARBARA CHANNEL AND CALIFORNIA'S OVER-ALL UNIT AREA OF INLAND WATERS.

### A. Special Master's Designation of the Area.

The first area designated for adjudication by the Special Master was described by him in the following manner:

> "1. The Segment from Point Conception to Point Hueneme (Group 1(a)—Chart 5202)."[1]

Special Master's Report, May 22, 1951, p. 38.

This was one of the areas requested to be adjudicated by the United States. Special Master's Report, *June 3, 1949,* pp. 1-2. The position of the United States was that the coastline of this segment followed the sinuosities of the mainland except at the mouths of rivers and the Goleta Slough where straight baselines were to be drawn across those openings.

Special Master's Report, May 22, 1951, p. 38.

California contended that this area (*i.e.,* the Santa Barbara Channel) was but a part of the Over-All Unit Area of Inland Waters composed of all islands offlying the mainland of Southern California and the waters enclosed by a line drawn around the seaward extent of those islands.

> California's Letter to the Honorable D. Lawrence Groner, Re: United States v. California Petition of Plaintiff for Supplemental Decree

[1]The waters lying between these two points are called the Santa Barbara Channel. (See, *infra,* p. 56.)

Hearings Before Special Master, October 27, 1948, pp. 2-3, Exhibit 8;

Trial Brief of State of California, April 21, 1949, pp. 15-16, 18-19, Exhibits 4, 5, 6, 13;

California's Brief in Relation to Report of Special Master of May 22, 1951, pp. 25-31.

The Special Master set forth California's contentions regarding the first segment in terms of California's claim to the Over-All Unit Area of Inland Waters. This claim encompassed the area within a line running around the outermost islands and rocks from Point Conception to the eastern jetty at the entrance to Newport Bay. Within the Over-All Unit Area were two alternate areas which would include the Santa Barbara and San Pedro Channels and waters landward thereof.

Special Master's Report, May 22, 1951, pp. 38-41. At the time of the hearings before the Special Master, he allowed California to extend the designation to the southerly terminus of the primary designation of the Over-All Unit Area to Point Loma instead of the jetty at Newport Beach in conformity with prior designations made by California.

Transcript of Hearings Before Special Master, pp. 234-239 (1952);

See: California's Letter to the Honorable D. Lawrence Groner, October 27, 1948, Exhibit 8;

Trial Brief of State of California, April 21, 1949, Exhibit 13.

## B. Position of California Regarding the Santa Barbara Channel and the Over-All Unit Area of Inland Waters.

California reasserts its position that its coastline runs around the seaward extent of the Over-All Unit Area of Inland Waters from Point Conception to Point Loma upon the basis of the definition of California's boundaries as set forth in its Constitution of 1849, as approved by Congress, and upon principles of international law. California's claim to the Santa Barbara Channel is predicated both upon its inclusion within the Over-All Unit Area of Inland Waters, and upon its status as a separate area of inland waters enclosed by the fringe of islands offlying the mainland between Point Conception and Point Hueneme. In this Part I, we shall summarize first the physical and historical evidence pertaining to the Santa Barbara Channel, and then that pertaining to the Over-All Unit Area as a whole.

## C. The Santa Barbara Channel.

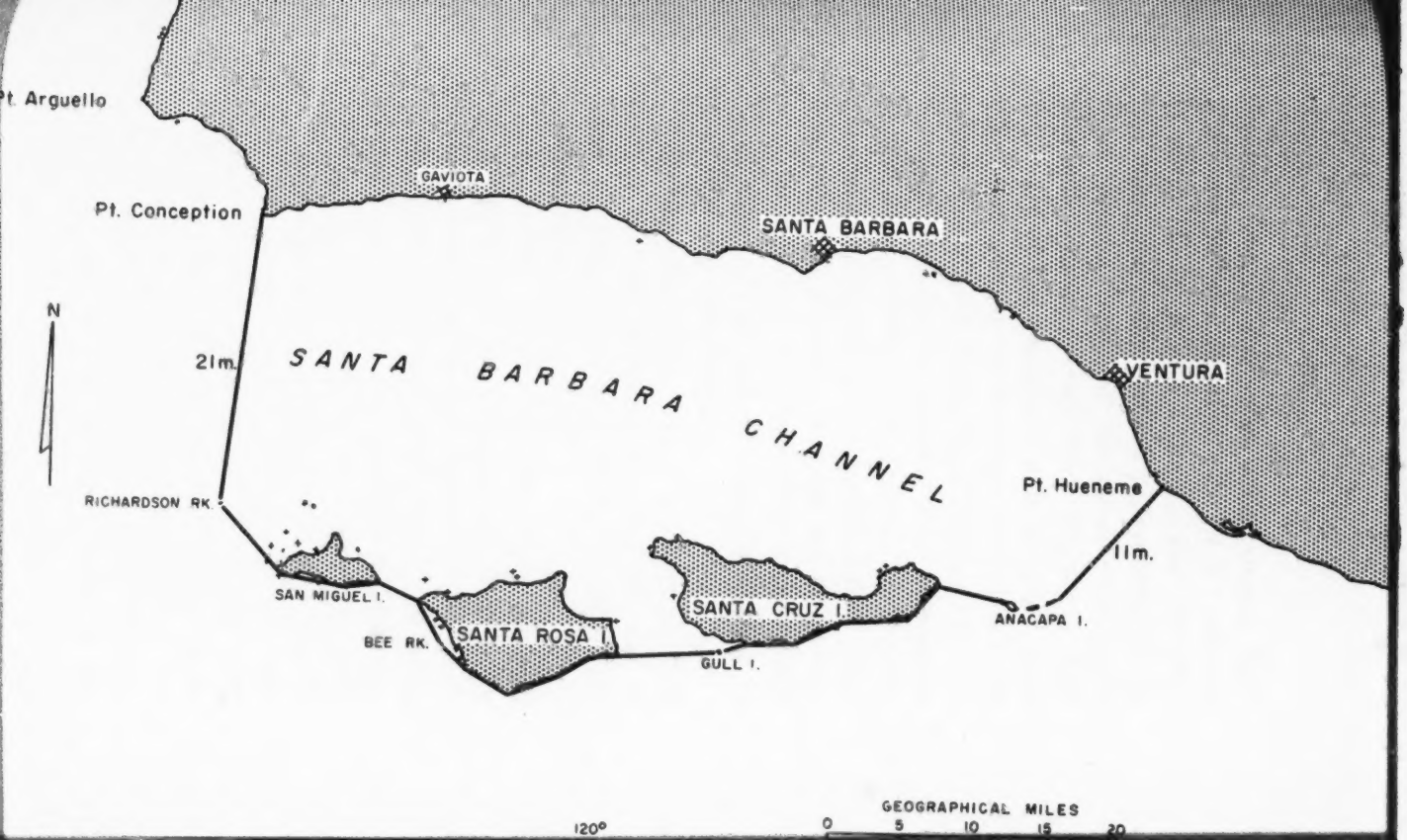
### 1. Physical Description of the Santa Barbara Channel (see map, opposite p. 56).

#### a. Description in the United States Coast Pilot.

George Davidson, author of the *Pacific Coast Pilot,* described the Santa Barbara Channel as follows:

"THE SANTA BARBARA CHANNEL"

> "This strait is sixty miles long by ten and a half to twenty miles wide, and lies between the main shore from Point Conception to Point Hueneme and the Santa Barbara Islands, which lie to the southward broad off the main-land. The islands are extensive, bold, and high, with deep


Pt. Arguello
GAVIOTA
Pt. Conception
SANTA BARBARA
N
21m.
SANTA BARBARA CHANNEL
VENTURA
Pt. Hueneme
RICHARDSON RK.
11m.
SAN MIGUEL I.
SANTA CRUZ I.
ANACAPA I.
BEE RK.
SANTA ROSA I.
GULL I.
120°
GEOGRAPHICAL MILES
0 5 10 15 20

channels four or five miles wide between them. The chain lies west by south (W. by S.) and east by north (E. by N.) in a straight line for fifty-five miles, and really forms a prolongation of the Santa Monica range of mountains that stretch fifty miles eastward from Point Mugu to a little northward of Los Angeles, already described (page 49). Commencing at the west the islands are named San Miguel, Santa Rosa, Santa Cruz, and Anacapa. Between the first and Point Concepcion is the western entrance to the channel, twenty-three miles wide; and between the eastern end of Anacapa and Point Hueneme, forming the eastern entrance or throat of the channel, the width is only eleven miles. From east to west the increase in width is gradual and regular.

"The islands break the force of the large westerly swell of the Pacific along the coastline, and in winter afford good lee from the full force of the southeast gales.

"The *eastern entrance to the Santa Barbara Channel* is marked by the great submarine valley off Point Hueneme, already described. This valley runs southward about seven miles to the three-hundred-fathom curve, six miles east of Anacapa. Westward of this valley the chart indicates a line of deep soundings through the axis of the channel, but nearer to the islands. Southwest of Point Hueneme the twenty-fathom line is less than four miles off shore, with a bottom of fine gray sand; thence the soundings increase more rapidly to one hundred fathoms in one mile, with muddy bottom. The deepest part of the eastern entrance to the

channel, one hundred and thirty-eight fathoms, over mud, sand, gravel, etc., is five and a half or six miles from Point Hueneme. There is bold water round Anacapa—twenty fathoms within half a mile. Westward of Point Hueneme the twenty-fathom curve is six miles southwest of San Buenaventura; the one-hundred-fathom curve of nine miles, and the greatest depth is one hundred and thirty-two fathoms, at six miles from the west end of Anacapa. The one-hundred-fathom curve keeps well over on the south side of the channel and lies within seven miles of the east end of Santa Cruz Island, and the southern one-hundred-fathom curve is only two miles from the north shore of Santa Cruz. This south line of one hundred fathoms continues westward nearly parallel with the north shore of Santa Cruz Island, and is three and a half miles from it at the western extremity; but the northern line of one hundred fathoms retreats towards the Santa Barbara shore, and at Pelican Point is only three miles from it, whilst the depth in mid-channel has increased to three hundred and six fathoms, over dark-green mud. In this broad, deep channel there is a bank with less than one hundred fathoms ten miles south by east (S. by E.) from Santa Barbara."

George Davidson, *Coast Pilot of California, Oregon, and Washington* (4th ed., 1889), p. 53;

See also: *United States Coast Pilot 7, Pacific Coast*, p. 126 (8th ed., 1959).

b. PARALLELISM TO THE MAINLAND.

"On the chart of the coast from San Diego to San Francisco, published by the United States Coast

Survey in 1853, a remarkable and beautiful exhibition of the parallelism between the islands and the adjacent coast is presented. The four islands, Anacapa, Santa Cruz, Santa Rosa, and San Miguel, with the rocks 7 miles W. by N. from the latter, lying broad off the coast between San Buenaventura and Point Conception, have their longer axes parallel to the trend of the shoreline, which is the general direction of the Sierra Concepcion immediately behind it. In Vizcaino's voyage this parallelism was noted west of Santa Catalina, 'where a regular row of islands exist, five or six leagues distant from each other, all populous, and the inhabitants trading with each other and the main; and the islands following each other in the same direction as the main land.' "

Davidson, *Directory for the Pacific Coast of the United States, Reported to the Superintendent of the United States Coast Survey,* pp. 14-15 (1858);

Davidson, *Directory for the Pacific Coast of the United States, Reported to the Superintendent of the United States Coast Survey,* p. 17 (1862).

c. GEOLOGY.

Geologically, the channel is part of the Ventura-Santa Barbara Basin which extends inland in the Santa Clara River area to about Castaic. The same rock formations are found on the islands of the channel and the mainland. The reason for this is the fact that during an earlier geologic period the islands formed a part of the mainland.

Transcript of Hearings Before Special Master, pp. 1059-1060, 1062-1064 (1952);

Blake, *Observations of the Physical Geography and Geology of the Coast of California from Bogeda Bay to San Diego, Report of the Superintendent of the Coast Survey, Showing the Progress of the Survey During the Year 1855,* House Ex. Doc. No. 6, 34 Cong. 1st Sess., Appendix No. 65, p. 398 (1856).

### d. Weather Conditions.

Weather conditions within the channel are milder than are encountered north of Point Conception. Davidson, Assistant Superintendent of the United States Coast Survey, commented that:

> "Within the Santa Barbara Channel the climate is much milder than to the northward, this section being protected by the bold range of the Sierra Concepcion or Santa Ynez Mountains.
>
> Davidson, *Coast Pilot of California, Oregon and Washington,* p. 54 (4th ed. 1889).

The change in meteorological conditions is more apparent on rounding Point Conception going north immediately after leaving the Channel. This is seen from the following description of Point Conception, marking the western entrance to the channel:

> "Next to the islands of the Santa Barbara channel, Point Concepcion is the most prominent and interesting feature between San Francisco and the peninsula of Lower California. It has very justly and appropriately been termed the 'Cape Horn' and the 'Hatteras' of the Pacific, on account of the heavy northwesters that are here met with on

coming through the channel, with a great change of climate and meterological conditions; the transition being remarkably sudden and well defined. An investigation of the temperature of the ocean, northwest and east of the cape, would be highly instructive, as some characteristics would naturally be expected from the abrupt change in the direction of the mountains and coast line. We have frequently seen vessels coming from the eastward with all sail set, and light airs from the north, in a very little time reduced to short canvas upon approaching the cape, and vessels from the northwest coming before a spanking breeze lose it within a few miles after passing the cape into the channel. These last would be fortunate in reaching Santa Barbara in a day. We have known a vessel to be three days working from San Buenaventura to Santa Barbara, whilst a ten-knot breeze was blowing west of Point Concepcion."

Davidson, *Directory for the Pacific Coast of the United States, Reported to the Superintendent of the U. S. Coast Survey,* pp. 15-16 (1862).

Great change in climate and meteorological conditions upon entering the channel from northern California is also noted in Blake, *Observations of the Physical Geography and Geology of the Coast of California from Bodega Bay to San Diego, Report of the Superintendent of the Coast Survey, Showing the Progress of the Survey During the Year 1855,* House Ex. Doc., No. 6, 34 Cong. 1st Sess., Appendix No. 65, p. 379 (1856).

e. Protection Afforded by Offlying Islands.

A Congressional document in referring to the channel area made the following observation:

> "13. *Wave refraction* . . . . Considerable wave energy is absorbed by the various islands offshore."
>
> Appendix I, Coast of California, Carpenteria to Point Mugu, Beach Erosion Control Study, 83d Cong., 1st Sess., House Doc. No. 29, p. 58 (1953).

As stated by Davidson:

> "The islands break the force of the large westerly swell of the Pacific along the coastline, and in winter afford good lee from the full force of the southeast gales."
>
> Davidson, *Coast Pilot of California, Oregon and Washington* (4th ed., 1889), p. 53.

f. Area.

The channel is 1500 square nautical miles in area. (See map opposite p. 56.)

g. Ports and Harbors Within the Channel.

The Santa Barbara Channel contains the following ports and harbors:

| | |
|---|---|
| Coxo Anchorage | Port Hueneme |
| Gaviota | Elwood |
| Goleta | Cuyler Harbor at San Miguel Is. |
| Santa Barbara Harbor | Bechers Bay at Santa Rosa Is. |
| Ventura | Chinese Harbor at Santa Cruz |
| | Smugglers Cove |

*United States Coast Pilot 7, Pacific Coast,* pp. 115-117, 122-126 [8th (1959) ed.].

**2. Discovery, Exploration, and Use of the Santa Barbara Channel Prior to 1849.**

a. DISCOVERY BY CABRILLO.

The Santa Barbara Channel was discovered by Juan Rodriguez Cabrillo, a Spanish explorer, in 1542. He spent a winter on San Miguel Island and visited the other islands fringing the Channel and the adjacent mainland. He died on San Miguel Island.

Wagner, *Spanish Voyages to the Northwest Coast of America in the Sixteenth Century,* pp. 86-90 (S. F. 1929);

Wagner, *Cartography of the Northwest Coast of America to the Year 1800,* vol. II, pp. 413, 438 (Berkeley, 1937).

b. VIZCAINO—NAMING AND DESCRIPTION.

(1) *Naming.*

In 1602, Sebastian Vizcaino named the channel "El Canal de Santa Barbara."[2]

Wagner, *Cartography of the Northwest Coast of America to the Year 1800,* vol. II, p. 413 (Berkeley 1937);

Davidson, *Directory for the Pacific Coast of the United States,* p. 16 (1862);

Davidson, *Directory of the Pacific Coast of the United States,* p. 13 (1858).

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[2]In Spanish a canal is defined as a canal, an artificial waterway; a channel, a strait between islands or continents; a channel, a navigable entrance to a harbor; canal de la Mancha—British Channel. Marino Velasquez de la cadena. *A New Pronouncing Dictionary of Spanish and English Languages,* p. 116 (Chicago, 1957).

(2) *Description.*

The first chart of the channel was drawn at Vizcaino's direction.

> Wagner, *Spanish Voyages to the Northwest Coast of America in the Sixteenth Century*, p. 238 (S. F., 1929).

Father Antonio de la Ascencion, who kept the record of Vizcaino's voyage, described the Channel as follows:

> "From this island a line of islands large, small and of medium size runs on four or six leagues apart. They are well settled with Indians who trade and communicate with each other and with those on the mainland. From the first to the last they must continue for more than a hundred leagues, one after the other as the coast of the mainland trends. Between them and the mainland there is a very good and safe passage, so wide that in places it measures twelve leagues and at the least eight. This passage is named 'La Canal de Santa Barbara' and extends from east to west." *Id.* at p. 239.

Significantly, Father Antonio de la Ascencion, who kept the record of Vizciano's voyage, remarked that ships from China by-passed the channel, considering the islands to be part of the mainland, stating:

> "When those who came from China passed in view of these islands, they never thought them to be islands because they were so close together, and therefore they kept away from them." *Id.* at p. 239.

c. Other Early Description.

The Bolaños—Ascension Derrotero [a 17th Century mariner's guide] describes the Channel as follows:

> "Altogether the islands are about twenty leagues long, and between them and the mainland there is a very good and safe passage named the 'Canal .de Santa Barbara.'"
>
> Wagner, *Spanish Voyages to the Northwest Coast of America in the Sixteenth Century,* p. 437 (S. F., 1929).

d. Use and Occupancy by Indians.

The islands and mainland of the Channel were thickly settled with Indians[3] before and during the time of Spanish control of California. According to Cabrillo, the channel was well inhabited. He reported the names of more than forty towns on the mainland and six towns on one of the islands. He also noted two villages on San Miguel Island, three on Santa Rosa Island, and eight on Santa Cruz Island. Indians from canoes were constantly boarding his ships while he was in the channel.

> Wagner, *Spanish Voyages to the Northwest Coast of America in the Sixteenth Century,* pp. 86-88, 90 (S. F., 1929).[4]

Portolá's expedition found Indian villages on the mainland of the channel with populations of 200, 300, and 500 persons. Often villages were separated by only a few miles.

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[3]These Indians were known as the Chumash Indians. Wagner, *Spanish Voyages to the Northwest Coast of America in the Sixteenth Century,* p. 75 (S. F., 1929).

[4]For current names of places described by Cabrillo, see Wagner, *Cartography of the Northwest Coast of America to the Year 1800,* vol. II pp. 423ff (Berkley, 1937).

*Diary of Portolá,* edited by D. E. Smith and F. J. Teggart, Academy of the Pacifc Coast History Publications, vol. I, No. 3, p. 55 (1910).

The primary occupation of the Indians of the channel was fishing.

*Ibid;* Wagner, *Spanish Voyages to the Northwest Coast of America in the Sixteenth Century,* p. 87 (S. F., 1929).

Constant commerce and trade was conducted between the Chumash Indians on the mainland and islands of the Channel.

Wagner, *Spanish Voyages to the Northwest Coast of America in the Sixteenth Century,* p. 239 (S. F., 1929);

Miguel Costansó, *Diario Historico,* edited by A. van Hemert-Engert and F. J. Teggart, Academy of Pacific Coast History Publications, vol. I, pp. 137-139 (1910).

This communication was made possible by the excellent canoes they constructed which distinguished them from the Indians of the surrounding areas, and by the fact that they were excellent mariners:

"The canoe, *tomol* or *tomolo,* was one of the glories of the Chumash. Their northern neighbors were entirely without; only toward Cape Mendocino were canoes again to be encountered; and these were of a quite different type. The Shoshoneans of the islands, of course, had boats; and in some measure the Chumash-Gabrielino form of canoe was employed southward at least as far as San Diego. But the Luiseño and Diegueño did not voy-

age habitually; and for local use, the rush balsa seems to have been commoner. The Chumash, however, were mariners; they took to their boats not only when necessity demanded, but daily, so far as weather permitted."

Kroeber, *Handbook of the Indians of California,* p. 558 (Smithsonian Institute, Bureau of American Ethnology Bulletin No. 78, Wash., 1925).

"The expertness and skill of these Indians is unsurpassed in the construction of their canoes of pine boards. They are from 8 to 10 yards in length from stem to stern-post, and one yard and a half in breadth. No iron whatever enters into their construction. . . . But they fasten the boards firmly together, making the holes at equal distances apart, one inch from the edge, matching each other in the upper and lower boards, and through these holes they pass stout thongs of deer sinews. They pitch and caulk the seams, and paint the holes with bright colors. They handle them with equal skill, and 3 or 4 men go out to sea to fish in them, as they will hold 8 or 10. They use long double-bladed oars, and row with indescribable agility and swiftness. . . . They hold intercourse and commerce with the natives of the islands, from which they obtain the coral beads, which in all these parts take the place of money."

Miguel Costansó, *Diario Historico,* edited by A. van Hemert-Engert and F. J. Teggart, Academy of Pacific Coast History Publication, vol. I, pp. 137-139 (1910).

The Indians on the mainland of the Channel relied upon the offlying islands for beads which were used as money and for steatite bowls which were manufactured on the islands.

Miguel Costansó, *Diario Historico,* edited by A. van Hemert-Engert and F. J. Teggart, Academy of Pacific Coast History Publications, vol. I, p. 139 (1910);

Hawley, *Early Days of Santa Barbara,* p. 15 (Santa Barbara, 1920);

Mason, *History of Santa Barbara County, California,* p. 255 (Oakland, 1883).

With Spanish occupation of California, the Indians on the Channel Islands were gradually transferred to the mainland to work at the missions and on the ranchos. This was completed in the early 1830's. Those Indians who were not transferred were killed by the sea otter hunters.

Heye, *Certain Artifacts from San Miguel Island, California,* pp. 33-34 (N. Y. Museum of Am. Indian-Heye Foundation, 1919);

Hillinger, *The California Islands,* p. 120 (L.A. 1958);

Rev. Juan Caballeria y Collell, *History of the City of Santa Barbara, California from its Discovery to Our Own Days,* pp. 84-87 (Edmund Burke translation, Santa Barbara, 1892);

Mason, *History of Santa Barbara County, California,* pp. 254-255 (Oakland, 1883);

Dall, "The Lord of the Isles," *The Overland Monthly,* vol. 12, No. 6, p. 523 (June, 1874).

At the peak of their prosperity, the Indians on the islands of the Channel and the other islands of the Over-All Unit Area (see *infra,* pp. 95-96) numbered an estimated 20,000 persons.

Hillinger, *The California Islands,* p. 13 (L. A., 1958).

e. First Spanish Colonization.

Spain began colonization of the Channel area in 1782 with the founding of Mission San Buenaventura and the Santa Barbara Presidio by Governor Neve, Father Serra, and Captain Jose Francisco Ortega. Gálvez previously had designated the Channel area as a site for one of the original missions in California.

Caughey, *California,* pp. 168-169 (N. Y., 1940);

Hawley, *Early Days of Santa Barbara,* p. 30 (Santa Barbara, 1920).

f. The Nootka Sound Treaty.

In 1790, while California was still a Spanish possession, England expressly stipulated in Article 4 of the Nootka Sound Treaty with Spain that:

". . . British subjects shall not navigate nor carry on their fishery in the said seas within the distance of 10 maritime leagues from any part of the coast already occupied by Spain." (W. R. Manning, *The Nootka Sound Controversy,* Am. Hist. Assn. Annual Report 1904, p. 455.)

The ten-league boundary of Spanish dominion set forth in the treaty encompasses all of the Channel islands.

g. EXPLORATION BY VANCOUVER.

In 1793, George Vancouver, the English explorer, sailed through the Channel and designated the area on a map of his journey.

> Vancouver, *A Voyage of Discovery,* reprinted in Marguerite Wilbur, *Vancouver in California, 1792-1794,* plates No. 8, 9, and pp. 144-145, 148-150, 160-161, 173-175, 179, 213 (L. A., 1954).

A copy of this map is reproduced opposite page 80 of California's Brief in Relation to Report of Special Master of May 22, 1951.

h. SPANISH AND MEXICAN ENFORCEMENT OF HUNTING AND TRADE REGULATIONS IN THE SANTA BARBARA CHANNEL.

During the Spanish and Mexican periods of California history, the Channel played an important role in the hunting of sea otter and as a base of operations for foreigners who illegally traded with inhabitants of California.

Sea otters and seals were found in great quantities in the Channel.

> A. Ogden, *The California Sea Otter Trade 1784-1848,* pp. 7, 57, 132 (Berkeley, 1941).

Spain prohibited foreigners from trading in her territory and also forbade foreigners from hunting in Spanish waters without a license. Beginning in 1784, it granted monopolies in trading for sea otters killed along California's coast. Indians were sent out from the missions to hunt the otter. The Spanish were not completely successful in their hunting activities due to

administrative problems; but the availability of a ready source of pelts was demonstrated.

Ogden, *op. cit. passim.* particularly at pp. 15-31.

From the beginning of Mexican control of California in 1822 up until 1830, Mexican officials issued short term licenses and collected duties on all sea otter pelts from foreigners hunting those animals in the Channel.

Ogden, *op. cit.,* pp. 102-107, 114, 130, 137.

Following 1830, licenses for otter hunting were granted only to Mexican citizens.

Ogden, *op. cit.,* pp. 104-109;

Bancroft's Works, vol. XXI, *History of California,* vol. IV, p. 90 (S. F.,1886).

By 1841, the City of Santa Barbara had become one of the most important locations for obtaining these licenses, due to its proximity to sea otter hunting areas in the Channel.

Ogden, *op. cit.,* pp. 95-119, 137;

Dittmann, *Narative of a Sea Faring Life on the Coast of California,* pp. 12-19, 37 (Bancroft Manuscript, Berkeley, 1878);

William Ellison, *George Nidever,* p. 39 (Berkeley, 1937).

Prohibition of foreign traders was relaxed under Mexican rule so long as the foreigners were willing to pay an almost confiscatory tariff.

Bancroft's Works, XXI, *History of California,* vol. IV, p. 80 (S. F., 1886);

W. W. Robinson, *The Island of Santa Catalina,* p. 12 (L. A., 1941).

Spanish and Mexican authorities sought to prevent the illegal trade and hunting, especially around the Channel Islands which became a haven for such activities.

Ogden, *The California Sea Otter Trade, 1784-1848,* pp. 40-41, 55, 61-63, 68, 71, 124 (Berkeley, 1941).

The following measures were taken by the authorities:

In 1803, an unsuccessful proposal was made to put a mission and fort on one of the Channel Islands to control the illegal activities. This proposal was made by Fray Estevan Tapia who noted there were more Indians on the islands than the 1,800 at Santa Barbara.

Ogden, *The California Sea Otter Trade, 1784-1848,* pp. 41-42 (Berkeley, 1941), citing: Arrilaga to Tapia May 7, 1805 Prov. Records vi p. 22; Tapia to Arrilaga, March 1, 1805, Arch. Santa Barbara vi p. 28 and various communications from Viceroy Iturrigaray.

On June 2, 1813, the Boston merchant ship, the *Mercury,* was seized just south of Point Conception in the Channel by Captain Nicholas Noé, commander of the Spanish merchant vessel, *Flora,* for conducting illegal trade with missions and attempting to get furs. The captain and crew of the *Mercury* were taken to Santa Barbara. Spanish officials confiscated and later sold the *Mercury.*[5]

Ogden, *The California Sea Otter Trade, 1784-1848,* pp. 68-69 (Berkeley, 1941);

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[5]The significance of the enforcement proceedings against foreigners is more clearly seen when the small number of foreign ships to touch the California coast is noted. For example, dur-

Manuscript (L.A.P.L.) "Mercury Case," Cuad.° 10, p. 1, Cuad.° 15, pp. 1, 12, Cuad.° 16, p. 31, Cuad.° 17, pp. 21, 22.

In the years 1814 and 1815, the Spanish authorities arrested six Russian, one American, and thirty-six Aleut hunters for illegal otter hunting in the Santa Barbara Channel.

J. H. Winslow, *San Nicholas Island, Channel Islands, Ventura County, California,* p. 47 [Riverside 1960];

Ogden, *The California Sea Otter Trade, 1784-1848,* pp. 61-63 (Berkeley, 1941).

In 1816, the American ships *Albatross* and *Lydia* were seized in the Channel, and members of their crews imprisoned in Santa Barbara.

Ogden, *The California Sea Otter Trade, 1784-1848,* pp. 74-75 (Berkeley, 1941).

In 1837, the Mexican officials of Upper California purchased a schooner, the *California,* to "'prevent scandalous contraband and hunting for otters and seals in the refuges furnished by solitary places.'"

*Id.* at p. 131.

The Mexican government ordered Governor Alvarado to grant California's islands to private persons to prevent foreigners from interfering with California's commerce, fisheries and interests.

Ogden, *op. cit.,* p. 131;

Senate Doc. No. 18, 31st Cong., 2d Sess., p. 9; see *infra,* pp. 75-76.)

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ing the entire period of Spanish dominion, starting with the year 1786 and ending in 1822, only about 135 foreign ships visited Upper California. Bancroft's Works, vols. XVIII-XIX, *History of California,* vols. I-II *passim* (S. F., 1886); Ogden, *The California Sea Otter Trade, 1784-1848,* pp. 155-182 (Berkeley, 1941); Caughey, *California,* pp. 175-177 (N. Y., 1940).

Governor Alvarado in 1839 commissioned Allen Light a "comisario general" to search for the ship named *Llama* which had engaged in illegal otter hunting near Santa Rosa Island, in the Channel area.

*Id.* at pp. 130-131;

Bancroft's Works, vol. XXI, *History of California,* vol. IV, pp. 90-91 (S. F., 1886);

G. P. Hammond, ed., *The Larkin Papers,* vol. I, p. 3 (Berkeley, 1951).

In 1840, a privately owned Mexican vessel, the *Catalina,* along with the *California,* searched for contrabandists and unlicensed otter hunters on the waters and islands of the Channel.

Ogden, *The California Sea Otter Trade, 1784-1848,* p. 131 (Berkeley, 1941).

Sea otter hunters licensed by Mexican government often fought and attempted to capture unlicensed hunters found in the Channel Area.

Ogden, *The California Sea Otter Trade, 1784-1848,* pp. 125-130 (Berkeley, 1941);

Bancroft's Works, vol. XXI, *History of California,* vol. IV, pp. 90-91 (S. F., 1886);

William Ellison, *George Nidever,* pp. 40-44 (Berkeley, 1937).

i. DEVELOPMENT OF SANTA BARBARA CHANNEL ISLANDS UNDER MEXICAN DOMINION FOR PURPOSES OF PROTECTION OF THE MAINLAND, FISHERIES AND COMMERCE

(1) *Purpose of Development*

Prior to 1838 no grants had been made of the islands of California to private parties by the Spanish or Mexi-

can government. In fact, the governors of California believed that he did not have the power to make such grants.

> J. N. Bowman, *The Question of Sovereignty over California's Off-shore Islands,* Pacific Historical Review, vol. XXXIII, p. 296 (August, 1962).

Several governors of California, particularly Governor Alvarado, reported to the central government the use of the islands by contraband traders and unlicensed otter hunters.

*Id.* at pp. 296-297.

As a result of Governor Alvarado's report, the following letter was sent to the Governor by the Mexican Minister of the Interior:

> "Most Excellent Sir: The President being desirous to protect, on the one hand, the population of the islands adjacent to this department which form a part of the national territory, and, on the other, to prevent numerous foreign adventurers from appropriating to themselves important portions of them, whereby they can do much injury to our fisheries, commerce, and interests, has determined that your excellency, in concert with the council of the department, proceed with promptness and prudence to grant and distribute lands in the said islands to citizens who desire them, his excellency recommending that (immediately) a preference be extended to citizens Antonio and Carlos Barrello, [*sic*][6] for their important and patriotic services; and that

[6]Note: The name Barrello should be Carrillo. See: *Manuella Carrillo de Jones v. United States* Land Case No. 56 S.D. pp. 76-77 (1852) (Bancroft Library, Berkeley).

such one of the said islands as they may select be granted to them. I have the honor to give you this information for your government.

"For God and Liberty! Mexico, July 26, 1838.

"PESADO."

Senate Document No. 18, 31st Cong. 2d Sess., p. 91, (Hereinafter referred to as the Pesado letter.)

Governor Alvarado testified during an action to quiet title to Yerba Buena Island that the purpose of the Pesado letter was to prevent smuggling.

*United States v. Polack,* Land Case No. 299 N.D. (1858) (Bancroft Library, Berkeley).

(2) *Implementation of Development*

Santa Rosa Island (one of the Santa Barbara chain) was granted to Antonio and Carlos Carrillo in 1843.

*Manuella Carrillo de Jones v. United States,* Land Case No. 56 S. D., pp. 74-88. (1852-1855 Bancroft Library, Berkeley.)

The island was used for ranching purposes, and there was substantial traffic and commerce between the island mainland during the Mexican period.

C. F. Holder, *The Channel Islands of California,* pp. 284-285 (Chicago, 1910);

Mason, *History of Santa Barbara County, California,* p. 257 (Oakland, 1883);

*Manuella Carrillo de Jones v. United States,* Land Case No. 56 S. D., *passim.* (1852) (Bancroft Library, Berkeley).

Santa Cruz Island was also granted into private ownership by the Mexican government, and was also developed as a ranch for raising cattle and sheep.

*Aguirre v. United States,* Land Case No. 344 S. D. (1853) (Bancroft Library, Berkeley);

O'Neill, *History of Santa Barbara County, State of California, Its People and Its Resources,* p. 366 (Santa Barbara, 1939);

Bowman, "The Question of Sovereignty over California's Off-shore Islands," *Pacific Historical Review,* vol. XXXIII, p. 297 (August, 1962).

j. The Disturnell Map

At the time California was acquired by the United States from Mexico, the integral relationship of the islands and mainland of the Channel was shown by the shading of the California mainland and the waters and islands of the Channel as one unit on the map attached to the Treaty of Guadalupe Hidalgo.

5 Miller, *Treaties and Other International Acts of the United States of America* pocket part attached to back cover of volume;

(See Map attached hereto as Appendix CI and enlarged portion thereof opposite p. 78.)

**3. Historic Descriptions, Designations, and Use of the Santa Barbara Channel During the Period Immediately After 1849.**

a. County Boundary Descriptions

The islands of the Santa Barbara Channel all were included in Santa Barbara County by the Legislature's descriptions of the county in 1850, 1851, and 1852.

Calif. Stats. 1850, c. 15, § 4, p. 59;

Calif. Stats. 1851, c. 14, § 4, p. 173;

Calif. Stats. 1852, c. 133, § 1, p. 218.

The 1852 description most clearly shows that the seaward boundary of the county was to be drawn around the outside of the islands. That description is as follows:

> "Beginning on the coast of the Pacific, at the mouth of the Creek which divides that part of the Rancho of Guadalupe, called La Larga, from that part called Oso Flaco; thence up the middle of said Creek to its source; thence northeast to the summit of the Coast Range of Mountains, the farm of Santa Maria, falling within Santa Barbara County; thence following the summit of said Coast Range to its intersection with the northwestern boundary of Los Angeles County; thence southwesterly, following the boundaries of Los Angeles County *to the Ocean, and three miles therein; thence in a northwesterly direction, including the Islands of Santa Barbara, San Nicholas, San Miguel, Santa Rosa, Santa Cruz, and all others in the same vicinity, to a point due west of the place of beginning; thence to the place of beginning.* The Seat of Justice shall be at Santa Barbara." Calif. Stats. 1852, c. 133, p. 218. (Emphasis added.)

Some evidence as to the general acceptance of this description is the tracing of the boundary on the map given to the Santa Barbara Mission by Alexander Taylor.

(See Map attached hereto as Appendix C.I)

S.t Miguel
S.t Luis Obispo
La Purissima
Mis.n de S.ta Barbara
Juan Rod.z
S. Gabriel
San
Bahia S. Fra

b. Early U.S. Coast Survey References to Santa Barbara Channel as a "Sound"

Initial references to the Santa Barbara Channel by the United States Coast Survey designated the Channel as a "Sound" as is seen from the following quotations:

> "Sections X and XI: To continue the survey of the western coast, Oregon and California. Field Work—To determine the geographic positions, absolute and relative, of the important capes and headlands in California and Oregon; to complete the triangulation of San Francisco and San Pueblo Bays, &c [*sic*] and of *Santa Barbara Sound; . . .*" (Emphasis added.)
>
> *Report of the Superintendent of the Coast Survey Showing the Progress of the Survey During the Year 1851,* House Ex. Doc. No. 26, 32d Cong. 1st Sess. p. 26 (Washington, 1852).

> ". . . To the southward and eastward of Point Conception the islands of San Bernardino, San Miguel and Santa Cruz form the western border of the Santa Barbara Channel or sound."
>
> *Id.* at p. 525, Appendix No. 48.

c. Use of Islands as Bases for Mainland Surveys

The integral relationship of the islands and mainland of the Channel is shown by the fact that the islands provided a basis for greater accuracy in the development of triangulation control on the mainland.

> *Report of the Superintendent of the Coast Survey Showing the Progress of the Survey during the Year 1855,* pp. 94, 182-188, and Sketch No. 2 Showing the Progress of the Survey

on the Western Coast of the United States, Sections X and XI from 1850-1855 (Washington, 1856);

*Report of the Superintendent of the Coast Survey Showing the Progress of the Survey During the Year 1860.* House Ex. Doc. No. 14, 36th Cong., 2d Sess., pp. 93-94, Sketch J Showing the Progress of the Survey in Section No. X (Lower Sheet) From San Diego to Point Sal, and Sketch Showing the Progress of the Survey on the Atlantic, Gulf of Mexico, and Pacific Coast of the United States to November 1860 (Washington, 1861).

d. RANCHING ACTIVITIES ON SANTA BARBARA CHANNEL ISLANDS DURING PERIOD IMMEDIATELY FOLLOWING 1849

Ranching activities on the Santa Barbara Channel Islands, commenced under Mexican sovereignty, continued during the period after the conquest and the admission of California into the Union. The close economic relationship and interdependence between the Santa Barbara Channel Islands and the mainland at the time of the adoption of California's 1849 Constitution is demonstrated by the following:

Santa Cruz Island had immense flocks of sheep during this period and was described as the greatest wine producing area in Santa Barbara County.

Mason, *History of Santa Barbara County, California*, p. 256 (Oakland, 1883);

Holder, *The Channel Islands of California, pp.* 262-265 (Chicago, 1910).

Anacapa Island was used for raising sheep and goats, with supervision and supplies coming from the mainland.

Mason, *History of Santa Barbara County, p.* 254 (Oakland, 1883);

Holder, *The Channel Islands of California, pp.* 189-190 (Chicago, 1910).

San Miguel Island was also used for sheep raising.

Holder, *The Channel Islands of California,* p. 297 (Chicago, 1910).

**4. Representative Sampling of Maps Which Have Consistently Designated the Santa Barbara Channel[7]**

Briggs 1625

The North Part of America.

Goos 1626

America.

Hondius 1631

America Septentrionalis.

Hondius 1639

America Septentrionalis.

Vingboons 1639

California. MS map, 69x48, in an atlas of Joan Vingboons dated 1639.

Blaeu 1648

Nova totius terrarum orbis tabula.

Janssonius 1650

Mar del Zur Hispanis Mare Pacificum.

---

[7]Sometimes referred to on ancient charts and maps as Barbola and Barberia.

Seile 1652

Americae descriptio nova impensis Henrici Seile.

Sanson D'Abbeville 1656

Le Nouveau Mexique, et La Floride. Paris, 1656.

Visscher 1658

Novissima et accuratissima totius Americae descriptio per N. Visscher.

Doncker 1660

Pascaart vertoonende de Zeecusten van Chili, Peru, Hispania Nova, Nova Granada, en California.

Hollar 1666

A new and exact map of America and islands thereunto belonging. Published and are to be sold by Thomas Jenner . . . London, 1666.

Ogilby 1671

Novissima et accuratissima totius Americae descriptio per Johanem Ogiluium cosmographum regium.

Schagen 1671

Novissima et accuratissima totius Americae descriptio per Gerardum a Schagen.

Sanson 1680

North America divided into its principall parts . . . in which are distinguished the severall countries as they are possessed by the English, Spanish and French. Described by Sanson, Corrected and amended by William Berry.

Hack 1687

Description of the navigable parts of the world.

Coronelli 1690

America settentrionale colle nuove scoperte fin all' anno 1688.

Coronelli 1690

Mare del Sud detto altrimenti Mare Pacifico. Auttore Il P. M. Coronelli.

Fer 1700

Californie et Du Nouveau Mexique.

Anonymous 1716-1720

[Chart of the North Pacific]. MS, 175x70.

Delisle 1722

Carte d'Amerique.

Burriel 1756

Mapa de la America Septentrional Asia Oriental y Mar del Sur intermedio formado sobre las memorias mas recientes y exactas hasta el año 1754.

Fraslin 1765

Carta reducida tersera parte de la navegacion de Philipinas al Puerto de Acapulco segun la de Don Pedro Fraslin Piloto practico de esta carrera.

Alzate Y Ramirez 1768

Nuevo mapa geographico de la America Septentrional, perteneciente al Virreynato de Mexico dedicado a los sabios miembros de la Academia Real de las Ciencias de Paris, por su muy rendido servidor, y capellan, Don Joseph Antonio de Alzate, y Ramirez, Año de 1768.

Storace 1769

Plano de la Costa del Sur correjido hasta la Canal de Santa Barberia, en el año 1769.

Costanso 1770

Carta reducida del Occeano Asiatico nombrado por los navegantes Mar del Sur.

Costanso 1770

Chart of California

Anonymous 1775

[The northwest coast.] The eastern part of a manuscript map showing the coast from Puerto de la Bodega to Acapulco, 127x49. (no doubt the whole map), with insets of Puerto de la Bodega. San Diego, San Francisco Bay, San Blas, and Acapulco.

Mourelle 1777

Carta reducida que contiene el Golfo de California y costas septentrionales de ellas en el Mar Pacifico o del Sur. Corregida por el alferez de fragata de la Real Armada y primer piloto de ella Don Francisco Antonio Mourelle, segun las observaciones y demarcaziones que hizo con el paquebot de su mando San Antonio alias el Principe, al Puerto de San Diego en el Año de 1777.

Bodega Y Quadra 1779

Carta reducida de las costas y mares septentrionales de Californias, formada hasta el grada 58 de latitud por las observaciones hechas por el theniente de navio Don Juan Francisco de la Bodega y Quadra, y el alferez de fragata Don Francisco Antonio Maurelle, cuia costa se representa por medio de sombra de tinta, y quanto se manifesta por sombra encaranada pertenece a la de Monsieur Bellin impreza el año de 1766 . . .

Mascaro 1782

Mapa geografico de una gran parte de la America Septentrional comprendido entre los veinte, y quarenta y dos grados de latitud norte y los dos cientos quarenta y nueve y dos cientos ochenta y nueve de longitud oriental de Tenerife . . .

Mascaro 1783

Mapa geografico de una gran parte de la America Septentrional, comprehendido entre los 19° y 41° de latitud norte y los 251° y 289° de longitud oriental de Tenerife, . . .

Troncoso 1787

Californias:
Antigua y Nueva.

Cañizares 1788

Carta geographica que contiene la costa ocidental de la California situada al norte de la linea sobre el Mar Asiatico que se descubrio en los anos de 1769, y 1775, el primero por disposiciones del Illmo. Sr. D. Josè Galvez, y ordenes de los Exmos. Srs. virreyes Marquez de Croix, y Baylio Frey D. Antonio Bucareli &c. cuyos descubrimientos se egecutaron por el teniente de navio D. Juan Francisco de Bodega, y Quadra y por el alferez de fragata de la Real Armada D. Josè Cañizares desde los 17 hasta los 58 grados.

Arrowsmith 1790

Chart of the world on Mercator's projection, exhibiting all the new discoveries to the present time: with tracks of the most distinguished navigators since the year 1700, carefully collected from the best charts, maps, voyages, etc., extant. And regulated from the accurate astronomical observations, made in three voyages, performed under the command of Capt. James Cook, in the years 1768. 69, 70, 71-72, 73, 74, 75-76, 77, 78, 79 & 80.

Bodega Y Quadra 1791

Carta general de quanto hasta hoy se ha descubierto y examinado por los Españoles en la Costa Sep-

tentrional de California, formada . . . por D. Juan Francisco de la Bodega y Quadra &c Año de 1791.

Malaspina Expedition 1791
[The northwest coast from C. San Lucas to 48°.]

Bodega Y Quadra 1792
Carta reducida de la costa septentrional de California desde el Puerto de Acapulco hasta la Isla de Unalasca. . . .

Anonymous 1794
[Map of California.] MS, 93.5x58.

Arrowsmith 1794
Map of the world on a globular projection.

Vancouver 1798
A chart shewing part of the coast of N. W. America with the tracks of His Majesty's ship Discovery and armed tender Chatham.

Arrowsmith 1810
No title.

Thomson New General Atlas 1814
Spanish North America.

London, Smith, Alder & Company 1839
The Coast of Guatimala and Mexico.

Disturnell 1847
Mapa de los Estados Unidos de Mejico.

Disturnell 1848
Mapa de los Estados Unidos de Mejico.

Imray 1853
Chart of the Coast of California.

Colton 1854
California

U. S. Coast Survey 1855
Hydrography of San Buenaventura and Vicinity, Register H-503.

U. S. Coast Survey 1856
Hydrography of Point Hueneme and Vicinity, Register H-554.

Goddard, C. E. 1860
Third Edition of Britton and Rey's Map of the State of California.

Santa Barbara County Surveyor 1861
Tideland Survey No. 1.

Santa Barbara County Surveyor 1861
Tideland Survey No. 3.

U. S. Surveyor General 1862
Plat of the Island of Santa Rosa (No. 405).

U. S. Surveyor General 1863
Plat of the Island of Santa Cruz (No. 404).

U. S. Coast Survey 1853—corrected to 1864
Reconnaissance of the Western Coast of the United States.

Santa Barbara County Surveyor 1864
Tideland Survey No. 2.

U. S. Coast Survey 1869
Hydrographic Survey of Coxe Anchorage, Register H-1037.

U. S. Coast Survey 1869
Sheet No. 1, Inshore Hydrography of Santa Barbara Channel, Register H-1038.

U. S. Coast Survey 1869
Sheet No. 2, Inshore Hydrography of Santa Barbara Channel, Register H-1039.

U. S. Coast Survey 1869
Sheet No. 3, Inshore Hydrography of Santa Barbara Channel, Register H-1040.

U. S. Coast Survey 1869
Sheet No. 4, Inshore Hydrography of Santa Barbara Channel, Register H-1041.

U. S. Coast Survey 1869
Sheet No. 5, Inshore Hydrography of Santa Barbara Channel, Register H-1042.

U. S. Coast Survey 1869
Sheet No. 6, Inshore Hydrography of Santa Barbara Channel, Register H-1043.

U. S. Coast Survey 1869
Sheet No. 7, Inshore Hydrography of Santa Barbara Channel, Register H-1044.

U. S. Coast Survey 1853—corrected to 1870
Reconnaissance of the Western Coast of the United States.

U. S. Coast Survey 1870
Map of a Part of the Coast of California, Santa Barbara Channel from Santa Barbara to Pelican Point, Register T-1230.

U. S. Coast Survey 1853—corrected to 1874
Reconnaissance of the Western Coast of the United States.

State Geological Survey 1874
Map of California and Nevada.

U.S.G.L.O. 1875
Township & North, Range 25 West, SBM

U.S.G.L.O. 1875
Township 4 North, Range 26 West, SBM

U.S.G.L.O. 1875
Township 4 North, Range 27 West, SBM

U.S.G.L.O. 1875
Township 4 North, Range 28 West, SBM

U. S. Coast Survey 1875
Sketch J, Showing the Progress of the Survey in Section No. X.

U. S. Coast Survey 1875-76
Pacific Coast Hydrography of Santa Rosa Island, North Side, Register H-1334A.

U.S.G.L.O. 1876
State of California

U. S. Coast Survey 1853—Edition of 1877
Reconnaissance of the Western Coast of the United States.

U. S. Coast Survey 1877
Section Y, Santa Barbara Channel Inshore Soundings from Gaviota Wharf Westward to Longitude 120° 23′, Register H-1342A.

Rand-McNally and Company 1878
Business Atlas.

U. S. Coast Survey 1853—Edition of 1878
Corrected to 1882
Reconnaissance of the Western Coast of the United States.

U.S.C. & G.S. 1882
Pacific Coast from Santa Monica to Point Conception, Chart 6721.

Mefras 1884
Carte de la Cote de L'Amerique.

U.S.G.L.O. 1885
State of California

U.S.C. & G.S. 1888
Pacific Coast from San Diego to Point Arena, Chart 601.

U.S.C. & G.S. 1889
Outline Chart,

U.S.G.L.O. 1891
State of California

Rand-McNally and Company 1895
California.

U.S.G.L.O. 1900
State of California

Blunt 1901
Map of California from Monterey to Mexico.

U.S.G.S. 1901
Santa Barbara, California. 15′ quad.

U.S.G.S. 1904
Ventura, California. 15′ quad.

U.S.G.L.O. 1907
State of California

U.S.G.S. 1910
Southern California, Sheet No. 3.

U.S.G.L.O. 1928
State of California

U.S.C. & G.S. 1930
Santa Barbara, Chart 5261.

U.S.C. & G.S. 1930
Point Dume to Parisima Point Chart 5205, Seventh Edition.

U.S.C. & G.S. 1933
Santa Barbara to Goleta Point, T-4858.

U.S.C. & G.S. 1933
Santa Barbara Channel, San Buenaventura Harbor, H-5419.

U.S.C. & G.S. 1933
Vicinity of Santa Clara River, H-5420.

U.S.C. & G.S. 1933
Naples to Orella, H-5624.

U.S.C. & G.S. 1933
Vicinity of Mugu Lagoon, H-5425.

U.S.C. & G.S. 1933
San Buenaventura to Sea Cliff, H-5463.

U.S.C. & G.S. 1933
Santa Barbara Harbor, H-5464.

U.S.C. & G.S. 1933
Sand Point to Santa Barbara H-5499.

U.S.C. & G.S. 1933
Santa Barbara to Goleta Point, H-5502.

U.S.C. & G.S. 1933
Goleta Point to Naples, H-5503.

U.S.C. & G.S. 1933
Tajiguas to Gaviota, Register H-5625.

U.S.C. & G.S. 1933
Gaviota to Gato, H-5626.

U.S.C. & G.S. 1933
Gato to Point Conception, Register H-5627.

U.S.C. & G.S. 1934-35
San Miguel Island, H-5683.

U.S.C. & G.S. 1939
Santa Barbara, Chart 5261, Ninth Edition.

U.S.C. & G.S. 1940
Point Dume to Purisima Point, Chart 5202, Sixth Edition.

U.S.C. & G.S. 1941
Point Mugu to Ventura, Chart 5007.

Corps of Engineers U.S. Army 1942
Point Conception, California. 15′ quad.

U.S.N.H.O. 1942
Point Conception to Isla Cedros, Chart HD-5760.

U.S.C. & G.S. 1942
San Diego to San Francisco Bay Chart 5020, Second Edition.

U.S.G.L.O. 1944
State of California

U.S.C. & G.S. 1945
Anacapa Passage, Chart 5114, Second Edition.

U.S.C. & G.S. 1945
Santa Cruz Channel, Chart 5115, Second Edition.

A.M.S. 1947
Gaviota, California, B-795, 15′ quad.

U.S.C. & G.S. 1947
San Diego to Point St. George, Chart 5002, 11th Edition.

U.S.G.S. 1950
Goleta, California. 7½′ quad.

U.S.G.S. 1950
Pitas Point, California. 7½′ quad.

U.S.G.S. 1951
Dos Pueblos Canyon, California. 7½′ quad.

U.S.G.S. 1951
Ventura, California. 7½′ quad.

U.S.G.S. 1952
Carpinteria, California. 7½′ quad.

U.S.G.S. 1952
Santa Barbara, California. 7½′ quad.

U.S.G.S. 1952
White Ledge Peak, California. 7½′ quad.

U.S.C. & G.S. 1952
San Diego to San Francisco Bay Chart 5020, Third Edition.

U.S.G.S. 1953
Sacate, California. 7½′ quad.

U.S.G.S. 1953
Gaviota, California. 7½′ quad.

U.S.G.S. 1953
Point Conception, California. 7½′ quad.

U.S.G.S. 1953
State of California, South Half.

U.S.G.S 1953
Tajiguas, California. 7½′ quad.

U.S.G.S 1961
State of California.

U.S.C. & G.S. 1961
San Diego to San Francisco Bay Chart 5020, Fourth Edition.

U.S.C. & G.S. 1962
Point Dume to Purisima Point Chart 5202, Seventh Edition.

U.S.N.H.O. Date not indicated
Plate X, Upper California.

## D. The Over-All Unit Area of Inland Waters

### 1. Physical Description of California's Over-All Unit Area of Inland Waters. (See map opposite p. 94)

#### a. Early U.S. Coast Survey Descriptions

Assistant Superintendent of the United States Coast Survey, George Davidson, believed that all of the islands between San Diego and Point Conception formed the Santa Barbara Channel and accordingly treated the area as a unit. The area referred to herein as the "Santa Barbara Channel" and described by Vizcaino as "El Canal de Santa Barbara," was classified separately by Davidson as "the narrowest part of the channel." The Directories describing the California coast treated the area now claimed by California as a unit.

Davidson, *Directory of the Pacific Coast of California,* pp. 13-24 (Washington, 1858);

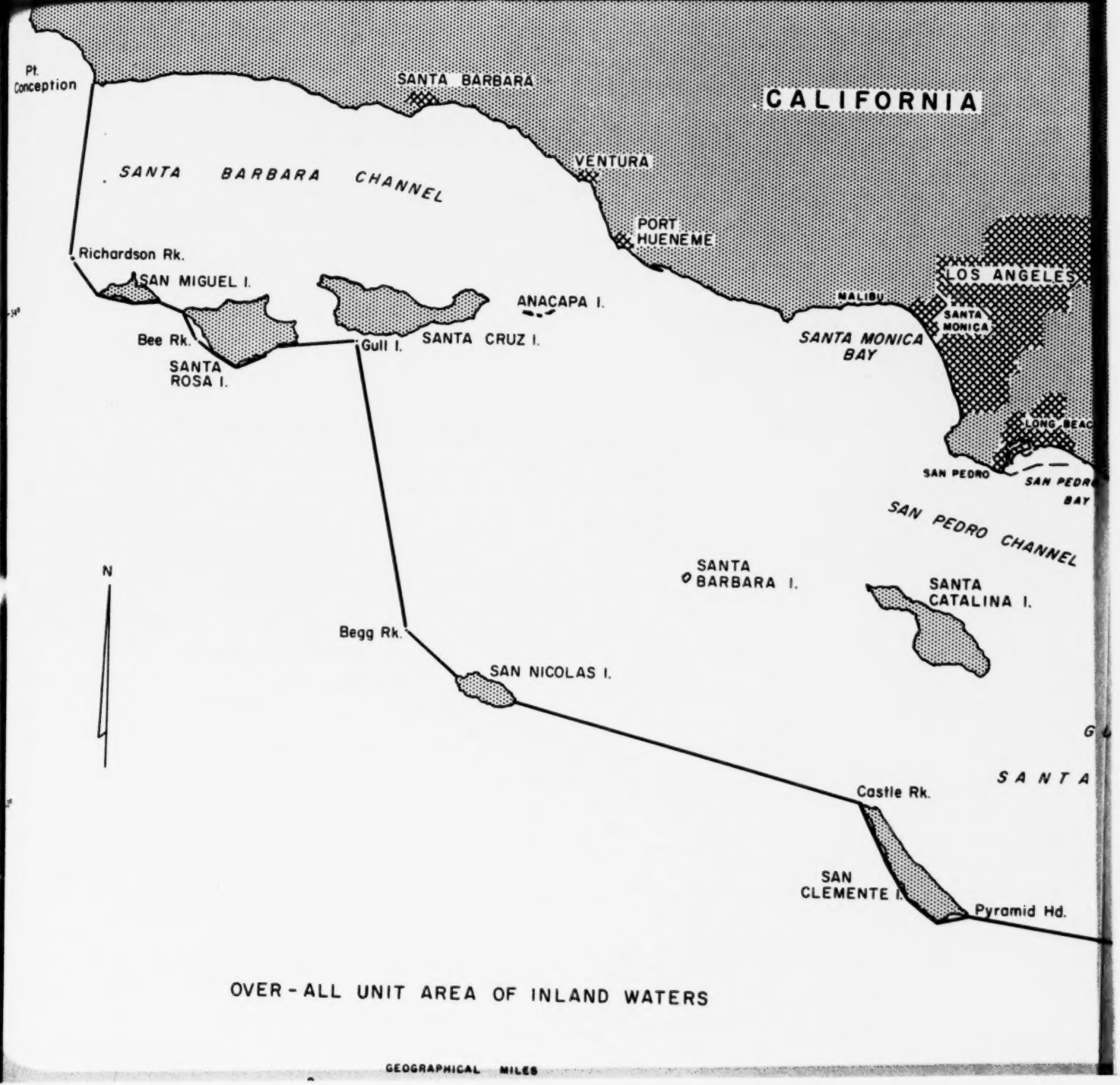
Davidson, *Directory of the Pacific Coast of California,* pp. 16-25 (Washington, 1862).

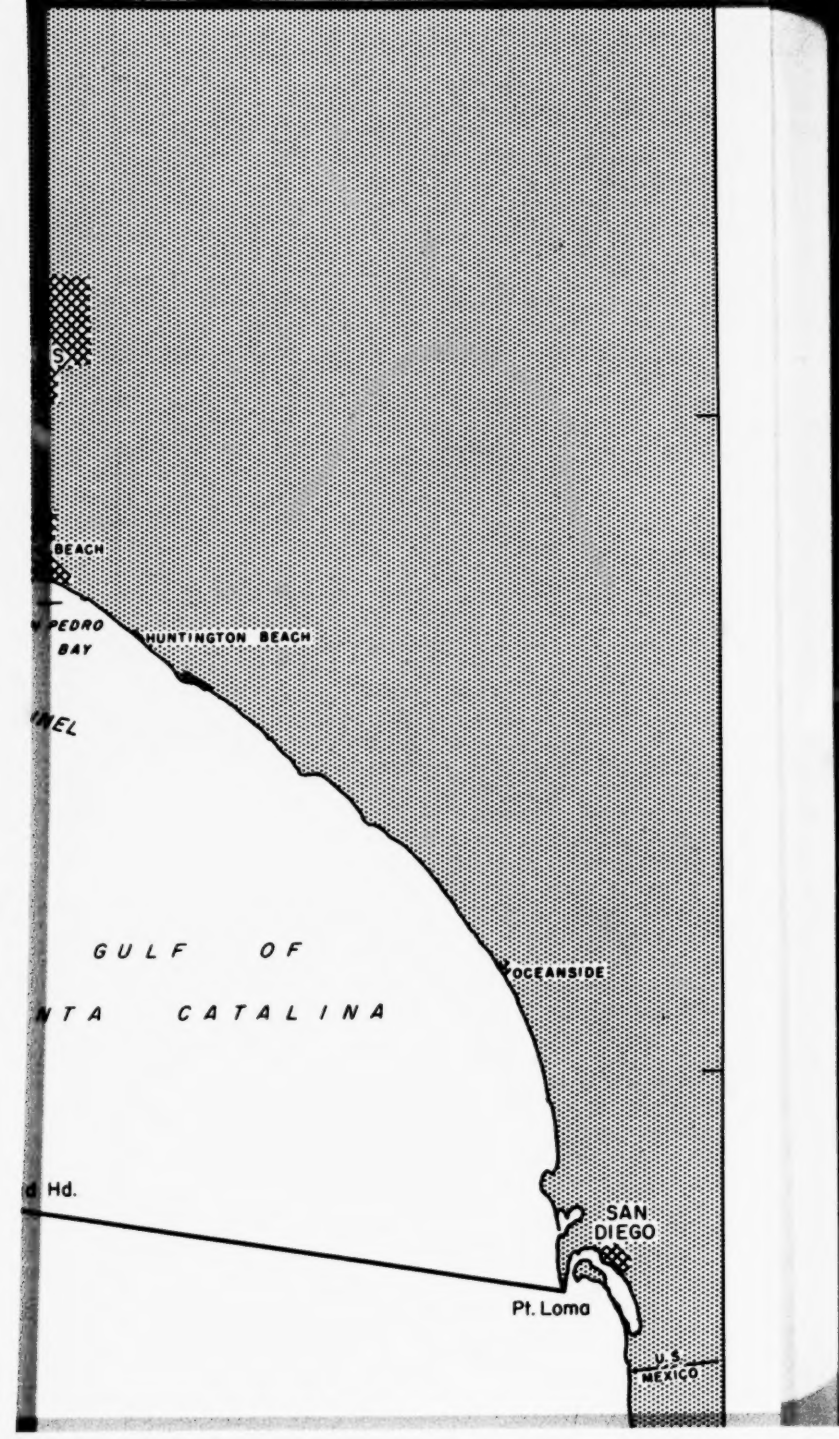
#### b. Current U.S. Coast Survey Description

The most concise description of the westward extent of California's Over-All Unit Area of inland waters is as follows:

> "The eight islands extending for 130 miles in a northerly direction off the coast of southern California from San Diego to Point Conception are known as the *Channel Islands.* They include the four islands of the southern group—San Clemente, Santa Catalina, San Nicolas, and Santa Barbara; and the four islands of the northern group also referred to as the *Santa Barbara Islands*—Anacapa, Santa Cruz, Santa Rosa, and San Miguel."

*United States Coast Pilot 7, Pacific Coast,* p. 119 (8th 1959 ed.).




BEACH
PEDRO
BAY
HUNTINGTON BEACH
INEL
GULF OF
NTA CATALINA
OCEANSIDE
d Hd.
SAN
DIEGO
Pt. Loma
U.S.
MEXICO

c. GEOLOGY

The islands were once a part of the California mainland.

Transcript of Hearings Before Special Master, pp. 863-870, 872-873, 1059-1060, 1062-1064 (1952).

**2. Historic Descriptions, Exploration and Use of the Over-All Unit Area Prior to 1849.**

a. INCORPORATION OF MATERIALS RELATING TO SANTA BARBARA CHANNEL.

As will be noted, many of the materials gathered in connection with the Santa Barbara Channel (Part IC hereof) have general application to the entire Over-All Unit Area, and will not be repeated here. See, especially, Part IC2h, relating to Spanish and Mexican enforcement of hunting and trade regulations, Part IC2i relating to the "Pesado letter" authorizing the Mexican governor of Upper California to grant California's islands into private ownership for protection of fisheries and commerce, and part IC3a, relating to the Alexander Taylor Map indicating early county lines around the offshore islands.

b. INDIAN HABITATION AND USE

Indians inhabited almost all of the islands of the Over-All Unit Area,[8] communicating and trading with each other and the Indians of the mainland until they were moved to mainland by Spanish and Mexicans.

Wm. Shaler, "Journal of a Voyage," *American Register* vol. III (1808) reprinted as a book

[8]California has found evidence of Indian habitation on all islands within the Over-All Unit Area, with the exception of Santa Barbara Island.

*Journal of a Voyage,* p. 210 (edited by Lindley Bynum—Claremont 1935);

Dittmann, *Narative of a Sea-Faring Life on the Coast of California,* pp. 55-93 (Bancroft Manuscript Berkeley, 1878);

Hillinger, *The California Islands,* p. 120 (L.A. 1958);

*U. S. Naval Institute Proceedings,* Vol. VII, No. 3, Whole No. 493, p. 264 (March 1944.)

### c. Early Exploration

#### (1) *Cermeño*

Cermeño visited the Over-All Unit Area in 1595, utilizing the Islands for protection from storms and for finding food. He commented upon the Indians and their canoes.

Wagner, *Spanish Voyages to the Northwest Coast of America in the Sixteenth Century,* pp. 162-163, 372-373 (S.F., 1929).

#### (2) *Cabrillo*

Cabrillo, in 1542, named Santa Catalina Island "San Salvador" and "Victoria" thinking that it was two islands. Cabrillo went ashore on the island and was met by a large group of Indians. Proceeding further north through the Unit Area and going back and forth between the mainland and islands, Cabrillo's ships were always followed by Indians in canoes. On the return trip, Cabrillo's ships sought shelter from a storm at Santa Catalina.

Wagner, *Spanish Voyages to the Northwest Coast of America in the Sixteenth Century,* pp. 73-76, 85-93, 333-337 (S.F., 1929).

(3) *Vizcaino*

Vizcaino, in 1602, gave San Clemente and Santa Catalina Islands their present names. He stopped at Santa Catalina, being guided to a safe anchorage by Indians in canoes. The Indians of this island were numerous and were accomplished canoe builders, having canoes which would carry 20 persons. The Indians were also excellent fishermen. Vizcaino also visited and named Santa Barbara Island. He then proceeded through what he named "El Canal de Santa Barbara." One of Vizcaino's ships sighted and named San Nicolas Island before proceeding north past Point Conception.

Wagner, *Spanish Voyages to the Northwest Coast of America in the Sixteenth Century*, pp. 239-240, 402 (S.F., 1929).

d. Hunting and Trade Activities, and Spanish and Mexican Regulation Thereof.

Sea otter hunters used Santa Catalina Island as a base for their operations sending canoes out over the Unit-Area in search of the animals.

Ogden, *The California Sea Otter Trade*, 1784-1848, pp. 43, 50 (Berkeley, 1941).

Spanish authorities arrested Russian and Aleut hunters for illegally hunting sea otters. These hunting operations were based upon San Nicolas Island and ranged over the entire Over-all Unit Area.

J. H. Winslow, *San Nicolas Island, Channel Islands, Ventura County, California*, p. 47 [Riverside, 1960];

Ogden, *The California Sea Otter Trade*, 1784-1848, pp. 62-63 (Berkeley, 1941);

*Provincial State Papers* XLVI, pp. 154-155 (Bancroft Library, Berkeley).

Similarly San Clemente and Santa Barbara Islands were used by otter hunters and contraband traders. San Clemente to a limited degree was used as a depot for slipping Chinese laborers into California.

Ogden, *The California Sea Otter Trade, 1784-1848,* pp. 7, 109, 135, 181 (Berkeley, 1941); Hillinger, *The California Islands,* p. 138 (L. A., 1958).

Catalina Island had harbors which were safe for large ships and afforded protection when San Pedro Bay was temporarily unsafe due to unusual wind conditions. Consequently, ships at San Pedro often ran the short distance to the island for protection and the island was visited by almost every ship touching that area of California. Catalina also provided an excellent place for ships to lie in wait for a safe time to slip to the mainland and engage in contraband trade. American merchants built a warehouse on Catalina, but were ordered to destroy it by Mexican authorities. Two American ships, the *Franklin* and the *Karimoka,* were ordered to stay away from Catalina Island. The sails of the *Karimoka* were seized at San Pedro for the failure of its master to pay duties assessed against its cargo.

Letter to Don Jose Figueroa, General Commander and Superior Political Chief, dated May 16, 1835, *Archives of Los Angeles, Miscellaneous Papers,* I, pp. 52-55 (Bancroft Library, Berkeley);

Ogden, *The California Sea Otter Trade, 1784-1848,* pp. 43, 82 (Berkeley, 1941);

Bancroft's Works, vol. XX, *History of California,* vol. III, pp. 128, 132-135 (S. F., 1886);

Holder, *The Channel Islands of California,* p. 39 (Chicago, 1910);

Hillinger, *The California Islands,* p. 45 (L. A., 1958).

The American seaman, Shaler, careened his ship on the shores of Catalina Island to repair the ship's bottom. Shaler also visited at various locations in the Unit Area to trade for hides which he stored in his ship at Catalina.

Wm. Shaler, "Journal of a Voyage" American Register, vol. III (1808) reprinted as a book *Journal of a Voyage,* pp. 46-49 (edited by Lindley Bynum, Claremont 1935);

Cleveland, *A Narrative of Voyages,* pp. 244-245 (Cambridge, 1842);

Ogden, *The California Sea Otter Trade, 1784-1848,* p. 45 (Berkeley, 1941);

Hillinger, *The California Islands,* p. 44 (L. A., 1958);

Robinson, *The Island of Santa Catalina,* p. 11 (L. A., 1941).

In 1805 and 1806, patrols were sent by the Spanish authorities from San Diego as far as the Santa Ana River to arrest foreigners engaged in illegal trade and otter hunting. Three sailors and a small boat were seized by one of the patrols in 1806.

Ogden, *The California Sea Otter Trade, 1784-1848,* p. 48 (Berkeley, 1941).

During the period of Mexican dominion, private merchant ships patrolled the Over-All Unit Area in search of contraband traders and unlicensed sea otter hunters.

This was in addition to the efforts of the Mexican patrol ship *California* and the special commission of the Mexican Governor of Upper California for the seizure of ships illegally in California waters.

Ogden, *The California Sea Otter Trade 1784-1848,* pp. 68, 131 (Berkeley, 1941);

Letter of Cooper to Guadalupe Vallejo, dated September 3, 1840, *Documentos para la historia de California,* 1713-1851, IX, p. 236 (Bancroft Library, Berkeley);

Letter of Governor Alvarado to Allen Light, dated January 27, 1839, *San Diego Archives,* p. 218 (Bancroft Library, Berkeley);

Manuscript (L.A.P.L.) "Mercury Case" Cuad.° 15, p. 12.

The *Bolivar Liberator,* owned by A. B. Thompson of Santa Barbara, who managed the ranching activities on Santa Rosa Island, plied the waters of the Over-All Unit Area, stopping at the various islands therein.

Ogden, *The California Sea Otter Trade 1784-1848,* p. 181 (Berkeley, 1941).

e. Mexican Land Grant of Catalina Island.

In 1846, Catalina Island was granted to Thomas M. Robbins by Governor Pio Pico, pursuant to the authorities contained in the "Pesado" letter (see Part I C 2 i *supra*). By 1847, Robbins had established a depot for salting hides on the island. He also had constructed a house and corral, and had stocked the island with cattle and horses. In addition, he placed a portion of it under cultivation.

*Jose Marins Covarrubias v. United States,* Land Case No. 368 S. D., pp. 11-13 (1853) (Bancroft Library, Berkeley).

**3. Historic Use of the Over-All Unit Area of Inland Waters Shortly After 1849.**

By 1853 a flourishing goat trade had been established on Catalina Island with a vessel plying regularly between the island and San Pedro, bringing goats to the mainland.

W. W. Robinson, *The Island of Santa Catalina*, p. 26, (L. A., 1941).

Shortly after California's admission to the Union, Captain Martin Kimberly moved sheep onto San Nicolas Island. These quickly multiplied to a flock of 15,000 with an annual income of $10,000.

M. J. Phillips, *History of Santa Barbara County*, p. 108 (L. A., 1927).

The unitary nature of the Over-All Unit Area is demonstrated by the fact that when the triangulation of the area was completed, the area triangulated conforms closely to the Over-All Unit Area designated by California.

*Report of the Superintendent of the Coast Survey Showing the Progress of the Survey During the Year 1860,* House Ex. Doc. No. 14, 36th Cong., 2d Sess. (Wash., 1861); Sketch Showing the Progress of the Survey on the Atlantic Gulf of Mexico and Pacific Coast of the United States to Nov. 1860.

**4. Court Decisions.**

Concerning that portion of the Over-All Unit Area between Santa Catalina and the mainland, it should be noted that in *Wilmington Transportation Co. v. Railroad Commission,* 166 Cal. 741 (1913), affirmed 236 U. S. 151 (1915), the California Supreme Court held that transportation of freight and commerce from the California mainland to Catalina is not "commerce with foreign nations" so as to oust the State Railroad Commission of jurisdiction. The court assumed that the cross-channel voyage took the vessels on to the high seas and out of the jurisdiction of California. Since, however, the question was not raised or argued, these assumptions cannot be considered authoritative.

In *United Air Lines v. Public Utilities Commission,* 109 F. Supp. 13 (N.D. Cal. 1952), the court found that a portion of the waters between the mainland and Santa Catalina was high seas. On appeal, the case was reversed by this Court in a *per curiam* decision, *Public Utilities Commission v. United Air Lines,* 346 U.S. 402 (1953). It should be noted that the court did not consider the extensive historical data presented by California herein.

## II

## SAN PEDRO BAY.

### A. Special Master's Designation of the Area and Summary of Former Proceedings.

Two of the segments designated by the Special Master for adjudication formed the area within the Over-all Unit Area called San Pedro Bay.

*Report of Special Master, May 22, 1951,* pp. 41-42.

The first of those two segments described by the Special Master was the area behind a line drawn from Point Fermin to a point in the City of Long Beach, which the United States recognized as inland waters within San Pedro Bay. California's contention with regard to the area behind this line was that this was only a part of the Bay and part of the Over-all Unit Area of inland waters.

*Ibid.*

The second of the two segments designated by the Special Master constituted the area from Long Beach to Point Lasuen at Newport Beach. Regarding the delimitation of the area southerly from Long Beach, the federal government contended that the sinuosities of the coast were to be followed to Newport Beach, with the exception of straight lines drawn across the mouths of Alamitos Bay, Anaheim Bay and the Santa Ana River. California's contention was that the entire area between Point Fermin and Point Lasuen at Newport Beach constituted an historic bay, and therefore was a part of

California's inland waters within the Over-all Unit Area, which the Special Master designated for adjudication as Segment No. 1.

*Id.* at p. 42;

Brief for the State of California in Proceedings Before the Special Master, June 6, 1952, pp. 95-105;

Trial Brief for the State of California Before the Special Master William H. Davis, February 20, 1952, pp. 13-20.

The reason given by the United States for recognizing the waters behind the line designated by them in San Pedro Bay was the fact that this was the only area in which they asserted that vessels had customarily docked when the harbor was unimproved.

Brief for the United States Before the Special Master, pp. 106-107.

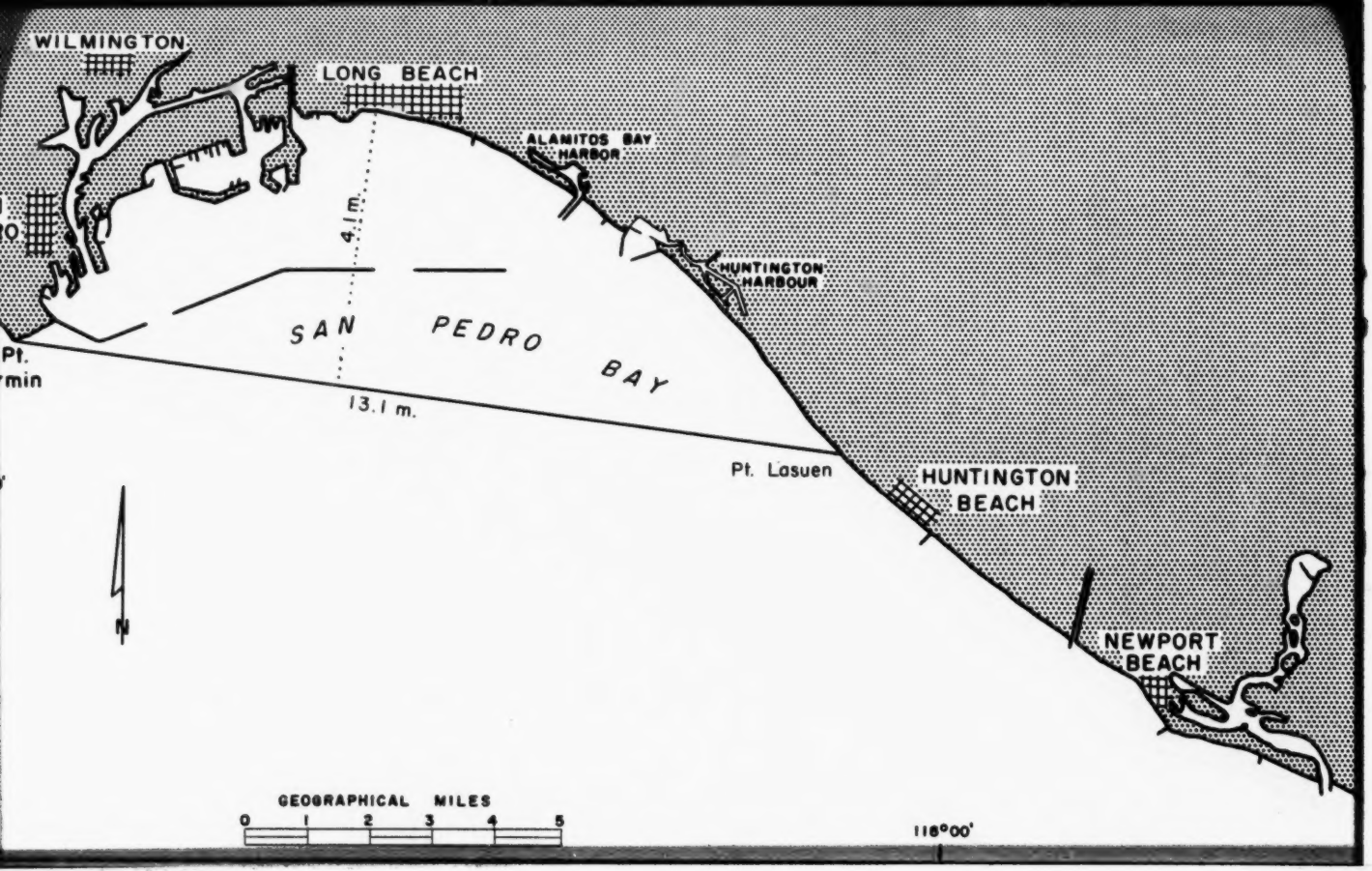
In addition, the United States contended that Point Lasuen was located at a point near Huntington Beach rather than at Newport Beach.

Reply Brief for the United States Before the Special Master, pp. 62-73.

The Special Master concluded that Los Angeles-Long Beach Harbor in San Pedro Bay constituted inland waters of the State of California, and thus disregarded the limitation the United States sought to impose by drawing a line from Point Fermin to the City of Long Beach.

Report of the Special Master, October 14, 1952, pp. 44-48.

The Special Master ruled that in the event his conclusion concerning San Pedro Bay not qualifying as a


WILMINGTON
LONG BEACH
ALAMITOS BAY HARBOR
HUNTINGTON HARBOUR
4.1 m.
SAN PEDRO BAY
13.1 m.
Pt.
rmin
Pt. Lasuen
HUNTINGTON BEACH
NEWPORT BEACH
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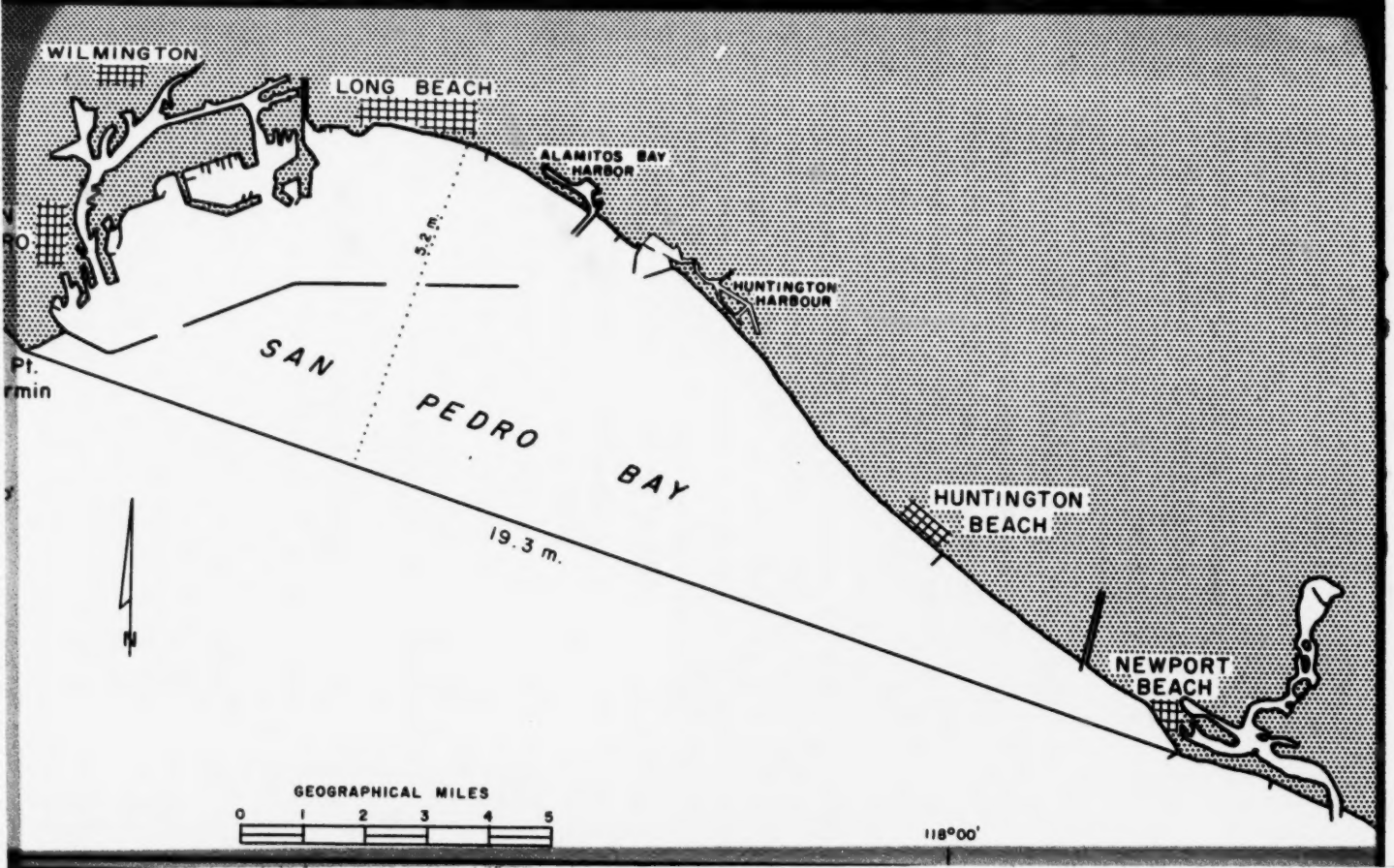
WILMINGTON
LONG BEACH
ALAMITOS BAY HARBOR
HUNTINGTON HARBOUR
3.2 m.
SAN PEDRO BAY
19.3 m.
HUNTINGTON BEACH
NEWPORT BEACH
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GEOGRAPHICAL MILES
0 1 2 3 4 5
118°00'

Bay was rejected by the Court, the southeastern headland of the bay should be at Point Lasuen located at Huntington Beach.

*Id.* at pp. 36-37.

## B. Position of California Regarding San Pedro Bay.

California continues to maintain that San Pedro Bay constitutes an historic bay within the meaning of California's Constitutuion of 1849, and that it forms a part of California's Over-all Unit Area of inland waters. California recognizes that historically the southerly terminus of San Pedro Bay is at Point Lasuen at Huntington Beach. *Transcript of Proceedings Before Special Master*, pp. 974-975 (1952). It is California's contention, however, that the southerly terminus of San Pedro Bay is at Newport Beach at which occurs the first change in the general direction of the coast.

## C. Physical Description.
## (See Maps opposite p. 104.)

### 1. Location and Dimensions.

The headlands contended for by California are from Point Fermin to Newport Beach. The distance between these headlands is 19.3 nautical miles and the maximum depth of the Bay is 5.2 nautical miles.

### 2. Protection Afforded by Bay.

Davidson described the bay in general terms as follows:

> "San Pedro Bay is well protected in every direction, except against the winter gales from the southeast round to the southwest. During the spring, summer and autumn months, it is an excellent roadstead. It is nearly free from dangers.

and there is nothing to be feared outside of a quarter of a mile from the shoreline in the bay or approaches."

Davidson, *Pacific Coast, Coast Pilot of California, Oregon, and Washington,* p. 38 [4th (1889) ed.].

To same effect see: Davidson, *Directory of the Pacific Coast of the United States,* p. 7 (1858 ed.), p. 10 (1862 ed.).

## D. Historic Use and Recognition.

### 1. Discovery

San Pedro Bay was discovered by Cabrillo in 1542 who named it the Bay of Smokes (Fumos).

Davidson, *Directory for the Pacific Coast of the United States,* p. 9 (1858 ed.), p. 11 (1862 ed.).

Wagner, *The Cartography of the Northwest Coast of America to the Year 1800,* Vol II p. 412 (Berkeley 1937).

### 2. Vizcaino—Earliest Map.

The earliest map available which shows the bay is a chart made during Sebastian Vizcaino's voyage up the California coast in 1602. He called the bay "Ensenada de S. Andres."

Wagner, *Spanish Voyages to the Northwest Coast of America in the Sixteenth Century,* pp. 235. 402 n 137 (S.F. 1929).

### 3. Additional Early Maps and Descriptions of San Pedro Bay.

Costanso's *Carta Reducida of 1771.* Wanger, *The Cartography of the Northwest Coast of Amer-*

*ica to the Year 1800,* Vol. I, Plate XXXIII facing p. 167 (Berkeley 1937).

Pantoja 1782 Chart of the Southern California Coast reproduced in *Historical Society of Southern California, Quarterly,* Vol. XVII, following p. 132 (1935).

Cabrera Bueno, an early cartographer, applied the name San Pedro Bay.

Guinn, *A History of California and an Extended History of Los Angeles and Environs,* pp. 309-310 (Los Angeles 1915);

Cabrera Bueno, *Navagacion expeculativa y practica,* (Manila 1734) translated in William Reverly, *An Historical Journal* (London 1790), p. 52 [where it is described as "A Bay, very good for shelter from Northwest, West, Southwest winds."]

**4. Other Early Explorers and Traders.**

a. SPANISH.

Vicente Vila—1769.

Rose, *Diary of Vicente Vila,* pp. 86-87 (Academy of Pacific Coast History Publications, Vol. II [Berkeley, 1911]).

Fray Pedro Font—Bolton, *Anza's California Expeditions,* Vol. IV, p. 188 (Berkeley 1930).

b. ENGLISH.

George Vancouver—1793.

Vancouver, George, *A Voyage of Discovery to the North Pacific Ocean,* p. 465, Vol. II (1798).

Forbes—1835.

Ludwig, *History of the Harbor District of Los Angeles,* p. 230 (Los Angeles 1928);

Forbes, *California: A History of Upper and Lower California,* p. 168 (London 1839). [Forbes described the bay as follows: "PORT SAN PEDRO is a very extensive bay, being sixteen miles from point to point." Ibid.]

Belcher—1839.

E. Belcher, *Narrative of a Voyage Around the World 1836-1842,* Vol. I, pp. 322-323 (London, 1843).

c. AMERICAN.

Shaler, in 1808, described the bay as follows:

"The next anchorage on the coast is the bay of San Pedro: this bay is very spacious, and has good anchorage and shelter from the prevailing winds, but it is entirely exposed to the southerly gales."

Cleland, *History of California,* Appendix B, 479. (N.Y. 1930) [First published in *American Register,* Vol. III (1808)].

d. FRENCH.

de Mofras—1840-1842.

Ludwig, *History of the Harbor District of Los Angeles,* p. 233 (Los Angeles 1928).

He described the bay as follows:

"The port of San Pedro is situated about four leagues from the Mission of San Fernando, twelve from the Mission of San Gabriel and ten from the Pueblo of Los Angeles. This anchorage does not deserve the name of port. It is a great bay which is about fifteen miles from point to point." *Ibid.*

**5. The Discovery of San Pedro Bay in Relation to Events Occurring Elsewhere in the World.**

"Sixty-seven years before Hendrick Hudson entered the Bay of New York, Cabrillo had dropped anchor in the Bay of San Pedro, the future port of Los Angeles."

Guinn, *Historical and Biographical Record of Los Angeles and Vicinity,* p. 18 (Chicago 1901).

"When the first English settlement was founded on American soil the Bay of San Pedro had been on navigators' charts for half a century. And 233 years were yet to pass before a white man's ship should enter the Bay of San Francisco."

Bartlett, "The Battle for South Pacific Ports," *Westways,* p. 12 (July, 1935).

**6. Use and Importance During Spanish and Mexican Periods.**

a. EARLY IMPORTANCE.

Following Spanish settlement of California, particularly after the founding of Mission San Gabriel in 1770, the Pueblo of Los Angeles in 1781, and Mission San Fernando in 1797, San Pedro Bay became the point of access to ships and the sea and the center of commerce for much of the hinterland. Few vessels came to the Pacific Coast without stopping at the Bay.

Guinn, *Historical and Biographical Record of Los Angeles and Vicinity,* p. 195 (Chicago 1901);

Bancroft's Works, Vol. XIX, *History of California,* Vol II, p. 564 (1885);

Ludwig, *History of the Harbor District of Los Angeles,* p. 233 (Los Angeles 1908);

Willard, *The Free Harbor Contest at Los Angeles,* p. 25-32, 24-25 (Los Angeles 1899);

Guinn, *A History of California and an Extended History of Los Angeles and Environs,* Vol. I, pp. 309-321 (Berkeley, 1915)

b. Sea Otters

Sea Otter traders frequented the Bay during the Spanish and early Mexican periods.

Ogden, *The California Sea Otter Trade 1784-1848,* pp. 43, 61-62; 67, 82-83, 97, 111, 130 (Berkeley, 1941);

Guinn, *A History of California and an Extended History of Los Angeles and Environs,* Vol. I, pp. 309-321 (Los Angeles 1915).

c. Hide Droghers.

Hide droghers found San Pedro Bay area to have the greatest quantity of hides to be obtained on the California coast during the late Spanish and early Mexican periods.

Dana, *Two Years Before the Mast,* pp. 117-118, 120-122 (N.Y. 1841).

d. Designation as Official Port.

In 1826, San Pedro became an official port of Mexican Upper California.

Gillis, *California, A Guide to the Golden State,* p. 420 (Fed. Writers' Project 1939-1954 ed.).

e. Use of Bay Substantial Distance From Shore.

Larger ships using the bay at San Pedro could not get closer than 1½ or 2 miles from the shore due to shallow water. There they anchored and transferred their cargo to small boats which shuttled to the shore.

Caughey, *California,* p. 498 (N.Y. 1940);

Ludwig, *History of the Harbor District of Los Angeles,* pp. 229, 232, 258-259 (Los Angeles 1928).

**7. Use and Importance Immediately After 1849.**

a. General Use.

Trade continued to flourish at an increased pace in the San Pedro-Wilmington area of the Bay during the period immediately after 1849. The Bay was used to receive goods destined for such distant areas as Arizona and New Mexico.

Rice, *The Los Angeles Star,* p. 102 (Berkeley 1947);

Newmark, *Sixty Years in Southern California 1853-1913,* pp. 22-24, 48, 151-153, 197, 199, 205, 236-237, 245, 274, 276, 285, 297, 301, 306, 308, 312, 346, 374, 380, 522 (N.Y. 1926);

Bell, *Reminiscences of a Ranger,* pp. 1, 147-148, 330, 341, 413 (Santa Barbara 1927);

Bell, *On the Old West Coast,* pp. 15-17, 38 (N.Y. 1930);

Matson, *The Story of Los Angeles Harbor,* pp. 12, 19-22 (Los Angeles 1945);

Mayo, *Los Angeles,* pp. 107-127 (N.Y. 1933);

Davidson, *Directory for the Pacific Coast of the United States,* p. 9 (1858 ed.), p. 11 (1862 ed.);

Cronise, *The Natural Wealth of California,* pp. 80-81 (S.F. 1868);

Hittell, *The Commerce and Industries of the Pacific Coast of North America,* p. 29 (S.F. 1882);

Guinn, *A History of California and an Extended History of Los Angeles and Environs,* Vol. I, pp. 322-347 (Los Angeles 1915);

Guinn, *Historical and Biographical Record of Los Angeles and Vicinity,* pp. 195-196 (Chicago 1901);

Willard, *The Free Harbor Contest at Los Angeles,* pp. 17-25 (Los Angeles 1899);

Caughey, *California,* pp. 498-502 (N.Y. 1940).

In 1855 Professor Bache, Superintendent of United States Coast Survey, made the following statement concerning San Pedro Bay:

"The bay of San Pedro is the most important between San Francisco and San Diego."

*Report of the Superintendent of the Coast Survey Showing the Progress of the Survey During the Year 1855,* House Ex. Doc. No. 6, 34th Cong. 1st Sess. p. 393 (Wash. 1856);

Ludwig, *History of the Harbor District of Los Angeles,* p. 234 (Los Angeles 1928).

b. Use in Area Easterly of Long Beach

Anaheim Landing on eastern side of the Bay, along with Wilmington, was the shipping port of Los Angeles, San Bernardino and Arizona, until the late 1860's when it was extensively damaged by a flood.

Bancroft's Works, Vol. XXIII, *History of California,* Vol. VI, p. 522 (1888);

*Pacific Coast, Coast Pilot of California, Oregon and Washington,* pp. 36-37 (4th ed. 1889);

Newmark, *Sixty Years in Southern California,* p. 366 (N.Y. 1926).

c. Usability Without Artificial Aids.

No improvements to afford artificial protection for ships within the Bay were constructed until 1871.

Willard, *The Free Harbor Contest at Los Angeles,* p. 35 (Los Angeles 1899).

**E. Legal Recognition.**

*United States v. Carrillo,* 13 Fed.Supp. 121 (S.D. Cal. 1935).

**F. Legislative References to Area in Question as a Bay.**

Report—Concerning Location of a Deep-Water Harbor Between Points Dume and Capistrano —Report of Board of Engineer Officers of the United States Army as to Proposed Deep-Water Harbor at San Pedro or Santa Monica Bays—House Executive Doc. 1, Part 2, 42nd Cong., 2d Sess. (1871);

Rivers and Harbors Act of August 5, 1886, 24 Stats., Ch. 929, pp. 310, 330;

House Document No. 191, 50th Congress, 1st Sess. (1888). (Relates to the status of San Pedro Bay as a bay and the end as a harbor.)

House Executive Document No. 39, 52d Congress, 1st Sess. (1891);

House Executive Document No. 41, 52d Congress, 2d Sess. (1892);

House Executive Doc. 1, Part 2, 41st Cong., 2d Sess. (1892), pp. 479 et seq. (Relates to status of San Pedro Bay as a bay and westerly portion thereof as being a harbor.)

Act of Congress, July 13, 1892, 27 Stats., Ch. 158, pp. 88, 95-96.

*Rivers and Harbors Act,* 29 Stats., Ch. 314, pp. 202, 214 (1896).

Senate Document No. 18, 55th Cong., 1st Sess. (1897).

**G. Representative Sampling of Maps Designating San Pedro Bay:[9]**

Agnese 1556

[Pacific Ocean.]
[North America]
[Oval World Map]

Homem 1559

Universa ac navigabilis totius terrarum orbis descriptio, cum omnibus portubus ynsulis fluviis, etc.

Agnese 1559

[Pacific Ocean.]
[Oval World Map]

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[9]Also designated as Bahia de los Fumas (or Fuegos)

Mercator 1569

Nova et aucta orbis terrae descriptio ad usum navigantium emendata, accomodada . . . .

Cossin 1570

Carte cosmografique ou universelle description du monde avec le vrai pourtraict des vens faict en Dieppe par Jehan Cossin marinier en l'an 1570.

Ortelius 1570

Americae sive novi orbis, nova descriptio.

Martines 1587

Northwest Coast.

Ortelius 1587

Americae sive novi orbis, nova descriptio.

Hogenberg 1589

Americae et proximarum regionum orae descriptio.

Hondius 1589

Americae novissima descriptio.

Ortelius 1589

Maris Pacifici (quod vulgo Mar del Zur) cum regionibus circumiacentibus, insulisque in eodem passim sparsis, novissima descriptio.

Mazza 1589

Americae et proximarum regionum descriptio.

Molyneux 1592

Terrestrial Globe, 66.5 in diam.

Sgrooten 1592

(Map of the northern hemisphere.) Praeseti Tabula totius terrae hemisphaerium Arcticum instar medietatis pilae palmariae in duas partes aequales divisae atque extesae lustrandu oculis sublicitur cu gnomone sursu et deorsum mobili elevationem poli indicante.

Botero 1595

America.

Mercator 1595

America sive India nova ad magnae Gerardi Mercatoris aui Universalis imitationem in compendium redacta. Per Michaelem Mercatorem Duysburgensem.

Blagrave 1596

Nova orbis terrarum descriptio . . . per Joannem Blagravum.

Ptolemy 1596

America.

Wytfliet 1597

Limes occidentalis Quivira et Anian.

Hondius 1600

Globus terrestris de integri revisus & emendatus an 1600.

Blaeu 1602

Terrestrial globe, 24 in diam., drawn and engraved in 12 gores, with a dedication signed by Guilielmus Jansonius Blaeu, 1602.

Hondius 1602

Americae novissima descriptio.

Blaeu 1605

Nova universi terrarum orbis mappa ex optimis quibusque geographicis hydrographicisq. tabulis summa industria accuratissime delineata et duobus Planisphaeriis graphice depicta a Guiliel. Ionssonio Alcmar [i.e. Blaeuw], 1605.

Jansz 1610

Nova orbis terrarum geographica ac hydrographica tabula ex optimis in hoc opere auctoribs desumpta.

Blaeu 1617

A terrestrial globe about 70 in diam., signed Guiljelmus Janssonius and dated 1617, and probably the original of the 1622 globes.

Janssonius 1621

A terrestrial globe, 13 in diam. engraved by Abraham Goos and issued by Janssonius in Amsterdam in 1621.

Hondius 1630

Nova totius terrarum orbis geographica ac hydrographica tabula. Auct: Henr: Hondio.

Janssonius 1640

America Septentrionalis.

Dudley 1647

Carta particolare della America è parte maestrale del C. di Cedros. 75.5x47.8. 27°-38° N and 239°-269° E. "America" XXXII.

Anonymous 1651

A new and accurat map of the world. Drawne according to the truest descriptions latest discoveries and best observations that have been made by English or strangers, 1651.

Blaeu 1663

Americae nova tabula. Auct. Guiljelmo Blaeuw.

Anonymous 1716-1720

[Chart of the North Pacific]. MS, 175x70.

Anson 1748

A chart of the Pacific Ocean from the equinoctial to the latitude of 39½° N.

Green 1753

Chart containing the coasts of California, New Albion and Russian discoveries to the north; with the

Peninsula of Kamchatka, in Asia, opposite thereto: and islands dispersed over the Pacific Ocean, to the north of the line.

Bellin 1755

Carte de l'Amerique Septentrional depuis le 28 degré de latitude jusqu'au 72 . . .

Anonymous 1758

Nouvelle carte des découvertes faites par des vaisseaux Russiens aux cotes inconnues de l' Amérique septentrionale avec les pais adiacents.

Jefferys 1761

A map of the discoveries made by the Russians on the North West coast of America. Published by the Royal Academy of Sciences at Petersburg.

Tirion 1765

Kaert van het Westelyk Gedeelte van Nieuw Mexico en van California.

Fraslin 1765

Carta reducida tersera parte de la nauegacion de Philipinas al Puerto de Acapulco segun la de Don Pedro Fraslin Piloto practico de esta carrera.

Storace 1769

Plano de la Costa del Sur correjido hasta la Canal de Santa Barberia, en el año 1769.

Estorbo Y Gallegos 1770

Mapa derrotero del viaje que hizo de Manila a Nueva España el piloto . . . marcandose en el las costas de Nueva España, Filipinas y Japon, y las Islas Carolinas, de los Ladrones, Rica de Oro, Rica de Plata, Barbudos, etc.

Costansó 1771

Carta reducida del Oceano Asiático ó Mar del Súr que comprehende la costa oriental y occidental de la Península de la California, con el golfo de su denominacion antiguamente conocido por la de Mar de Cortés, y de las costas de la América Septentrional desde el Isthmo que úne dicha Peninsula con el continente hasta el Rio de Los Reyes, y desde el Rio Colorado hasta el Cabo de Corrientes.

Vasquez 1773

Carta reducida que comprehende el resto de la derrota executada con la Fragata Buenfin desde los bajos de San Bartholome hasta el Puerto de Acapulco comprehendiendo parta de la costa de Nueva España y California con los bajos e isslas adjacentes delineada por Don Joseph Vasquez piloto 1° de la armada que executo este año 1773.

Jefferys 1775

A chart of North and South America including the Atlantic and Pacific oceans, etc.

Anonymous 1775

[The Northwest coast.] The eastern part of a manuscript map showing the coast from Puerto de la Bodega to Acapulco, 127x49 (no doubt the whole map), with insets of Puerto de la Bodega, San Diego, San Francisco Bay, San Blas, and Acapulco.

Mourelle 1777

Carta reducida que contiene el Golfo de California y costas septentrionales de ellas en el Mar Pacifico o del Sur. Corregida por el alfrez de fragata de la Real Armada y primer piloto de ella Don Francisco Antonio Mourelle, segun las observaciones y

demarcaziones que hizo con el paquebot de su mando San Antonio alias el Principe, al Puerto de San Diego en el Año de 1777.

Bodega Y Quadra 1779

Carta reducida de las costas y mares septentrionales de Californias, formada hasta el grado 58 de latitud por las observaciones hechas por el theniente de navio alfreze de fragata Don Francisco Antonio Maurelle, cuia costa se representa por medio de sombra de tinta, y quanto se manifesta por sombra encaranda pertenece a la de Monsieur Bellin impreza el año de 1766 . . .

Martinez 1780

[Map of the Pacific.]

Mascaró 1782

Mapa geografico de una gran parte de la America Septentrional comprendido entre las veinte, y quarenta y dos grados de latitud norte y los dos cientos quarenta y nueve y dos ciéntos ochenta y nueve de longitud oriental de Tenerife . . .

Pantoja 1782

Pequeña Carta que contiene desde la Punta de Santa Marta hasta la del Sur de la Baia de Todos Santos en la Costa Septentrional de la California.

Mascaró 1783

Mapa geografico de una gran parte de la America Septentrional, comprehendido entre los 19° y 41° de latitud norte y los 251° de longitud oriental de Tenerife, . . .

Cañizares 1788

Carta geographica que contiene la costa ocidental de la California situada al norte de la linea sobre

el Mar Asiatico que se descubrio en los anos de 1769, y 1775, el primero por disposiciones del Illmo. Sr D. Josè Galvez, y ordenes de los Exmos. Srs. virreyes Marquez de Croix, y Baylio Frey D. Antonio Bucareli & c. cuyos descubrimientos se egecutaron por el teniente de navio D. Juan Francisco de Bodega, y Quadra y por el alferez de fragata de la Real Armada D. Jose Cañizares desde los 17 hasta los 58 grandos.

Arrowsmith 1790

Chart of the world on Mercator's projection, exhibiting all the new discoveries to the present time: with the tracks of the most distinguished navigators since the year 1700, carefully collected from the best charts, maps, voyages, etc., extant. And regulated from the accurate astronomical observations, made in three voyages, performed under the command of Capt. James Cook, in the years 1768, 69, 70, 71-72, 73, 74, 75-76, 77, 78, 79 & 80.

Dalrymple 1790

Chart of the West-Coast of California, from a Spanish MS.

Bodega Y Quadra 1791

Carta general de quanto asta hoy se ha descubierto y examinado por los Españoles en la Costa Septentrional de California, formade . . . por D. Juan Francisco de la Bodega y Quadra &c. Ano de 1791.

Bodega Y Quadra 1792

Carta reducida de la costa septentrional de California desde el Puerto de Acapulco hasta la Isla de Unalasca. . . .

Anonymous 1794

[Map of California.] MS, 93.5x58.

Arrowsmith 1794

Map of the world on a globular projection.

Lopez 1794

Mapa de América, sujeto á las observaciónes astronomicas.

Vancouver 1798

A chart showing part of the coast of N.W. America with the tracks of His Majesty's ship Discovery and armed tender Chatham.

Anonymous 1802 Carta esferica de los reconocimientos hecos en la costa N. O. de America en 1791 y 92 por las goletas Sutil y Mexicana y otros buques de S. M.

Arrowsmith—London 1810

No title.

Thomson's New General Atlas 1814

"Spanish North America".

Smith Elder & Co. 1839

"The Coasts of Guatimala and Mexico with the Principal Harbours in California".

Bertrand—Paris 1844

"Explorations de L'Oregon, des Californies".

Greenhow 1844

"Map of the Western Portion and Middle Portions of North America".

Mofras 1844

"Carte de la Cote de L'Amerique".

U. S. Coast Survey 1851

"Reconnaissance of West Coast, Register 289, Sheet 2".

Imray—London 1853
"Chart of the Coast of California".

U. S. Coast Survey 1853
"Western Coast of the United States".

U. S. Coast Survey 1853,
Corrected to some later date
"Reconnaissance of the Western Coast of the United States, Chart 601".

U. S. Army Engineers 1854-1857
"Territory of the United States From the Mississippi to the Pacific Ocean".

Eddy, State Surveyor General 1854
"Official Map of the State of California by an Act of the Legislature Passed March 25, 1853".

Imray & Son—London 1854
"Chart of the Coast of California".

U. S. Coast Survey 1855
Map of the country between San Diego and the Colorado River, California.

Ransom and Doolittle 1863
New Map of the State of California and Nevada Territory.

U. S. Coast Survey 1853
Corrected to 1864
Reconnaissance of the Western Coast of the United States. Chart 601.

Ransom & Doolittie, Holt 1865
"New Map of the State of California and Nevada Territory".

U. S. Surveyor General 1866
Plat of Santa Catalina Island (No. 470).

Ransom and Doolittle 1868

A New Map of the States of California and Nevada.

Northam About 1870

"Map of a Portion of Los Angeles County".

Ransom 1870

A New Map of the States of California and Nevada

U. S. Coast Survey 1853
Corrected to 1870

"Reconnaissance of the Western Coast of the United States, Chart 601."

A. L. Bancroft 1871

Bancroft's Map of California, Nevada, Utah, and Arizona.

U. S. Coast Survey 1873

Improvements in Town of Wilmington and Wilmington Breakwater. Register T706B.

U. S. Coast Survey 1853
Corrected to 1874

"Reconnaissance of the Western Coast of the United States, Chart 601".

U. S. Coast Survey 1875

"Sketch J. Showing the Progress of the Survey in Section No. X".

Gibbes, C. E. (Published by Holt) 1876

Map of the States of California and Nevada.

U. S. Coast Survey 1853 Edition of 1877

"Reconnaissance of the Western Coast of the United States, Chart 601".

Rand McNally & Co. 1878
"Business Atlas".

U. S. Surveyor General 1880
Plat of the 100 Varas Square at San Pedro (No. 556).

Colton 1882
California and Nevada.

U. S. Coast Survey 1853 Edition of 1878
Corrected to 1882
"Reconnaissance of the Western Coast of the United States, Chart 601"

U. S. G. L. O. 1885
State of California

U. S. Coast and Geodetic Survey 1888
"Pacific Coast from San Diego to Pt. Arena, Chart 601"

U. S. Coast and Geodetic Survey 1889
"Outline Chart, 1889 Coast Pilot"

U. S. Coast and Geodetic Survey 1890
"Pacific Coast from San Diego to Santa Monica, Chart 671"

U.S.G.L.O. 1891
State of California

1891
"Chart of San Pedro Bay to Accompany Report of Board of Engineer Officers, U.S. Army"

1891
"Map of Pacific Coast Between Point Dume and Point San Juan Capistrano"

1897
"Map to Accompany the Minority Report of Richard Price Morgan on the location of a Deep Water Harbor"

U. S. Coast and Geodetic Survey 1897
San Pedro Bay from Los Angeles River to Point Fermin. Register H2282.

U. S. Coast Survey 1897
"Sketch of the Pacific Coast From San Diego to Pt. Conception Showing Progress of Primary Triangulation"

Rand McNally & Co. 1898
"New Business Atlas, Map of California"

U.S.G.L.O. 1900
State of California

Blunt 1901
"Map of California from Monterey to Mexico"

U.S.G.S. 1901
Southern California, No. 1, 3.

Punnett Brothers 1906
"Sectional Map of Southern California"

U. S. Coast and Geodetic Survey 1906
San Pedro Channel. Chart 5142, 2nd edition.

U.S.G.L.O. 1907
State of California

Dessery and West, Engineers 1911
Map of Los Angeles (Cal.) Harbor and Portions of San Pedro, Wilmington, and Long Beach. Also Terminal Island.

U. S. Coast and Geodetic Survey 1911
"Pacific Coast from San Diego to Santa Monica, Chart 5100"

Department of the Interior,
General Land Office 1913
"State of California"

U.S.G.S. 1925
Long Beach, California quad.

U.S.G.S. 1925
Wilmington, California 6′ quad.

U.S.G.L.O. 1928
State of California

U.S. Coast and Geodetic Survey
San Diego to Point Fermin. Chart 5102.

Wagner, *Spanish Voyages to the Northwest Coast of America in the Sixteenth Century,* Plate X opposite p. 320 (San Francisco 1929)
Upper California Chart 1006 Hydrographic Office U.S. Navy

U.S.C. & G.S. 1933-1935
San Pedro Bay, Western Park, H5486

Source unknown 1935
Seal Beach, California 7½′ quad.

U.S.G.S. 1935
Seal Beach, California 7½′ quad.

Corp. of Engineers U. S. Army—1936
Meanderings of the Rio Hondo, San Gabriel, and Los Angeles Rivers.

Blackburn 1938
Blackburn's Map of Orange County.

U. S. Coast and Geodetic Survey 1939
San Diego to Santa Rosa Island. Chart 5101A.

Corp. of Engineers U. S. Army—1940
Desired Improvements Los Angeles—Long Beach Harbors, California.

U.S.N.H.O. 1942
Point Conception to Isla Cedros. HO 5760.

Jones, County Surveyor 1943
Compilation of Tideland Boundaries.

U. S. Coast and Geodetic Survey 1943
Los Angeles and Long Beach Harbors. Chart 5147, 6th edition.

U.S.G.L.O. 1944
State of California

U. S. Coast and Geodetic Survey 1945
San Pedro Bay. Chart 5148, 2nd edition.

Corp. of Engineers U. S. Army—1946
Index Map, Playa Del Rey Harbor.

U. S. Coast and Geodetic Survey 1947
San Diego to Point St. George. Chart 5002, 11th edition.

U. S. Coast and Geodetic Survey 1947
San Diego to Santa Rosa Island. Chart 5101, 5th edition.

Corp. of Engineers U. S. Army—1948
Index Map, Redondo Beach Harbor.

Corp. of Engineers U. S. Army—1948
Index Map No. 1. River and Harbor Improvement, Harbor Projects.

Corp. of Engineers U. S. Army—1948
Los Angeles and Long Beach Harbors, California

Condition of work June 30, 1948.

U.S.G.S. 1949
Long Beach, California 7½′ quad. Map limited to Long Beach Harbor Vicinity.

U.S.G.S. 1949
Los Alamitos, California 7½′ quad. Map limited to Alamitos Bay Vicinity.

U.S.G.S. 1949
Seal Beach, California 7½′ quad.

U.S.G.S. 1951
Long Beach and Vicinity, California. Portion of.

U.S.G.S. 1951
San Pedro, California 7½′ quad. Map limited to Los Angeles Harbor Vicinity.

U.S.B.L.M. 1953
United States, Including Territories and Insular Possessions.

U. S. Coast and Geodetic Survey 1957
San Pedro Bay. Chart 5148, 3rd edition.

U.S.G.S. 1960
State of California, South Half.

U. S. Coast and Geodetic Survey 1961
San Diego to Santa Rosa Island. Chart 5101, 6th edition.

U.S.G.S. 1961
State of California.

U. S. Coast and Geodetic Survey 1962
Shoreline Manuscripts. Long Beach (Terminal Island), T-11641. Long Beach, T-11642. Long Beach (Middle Harbor), T-11647. Anaheim Bay, T-11648.

Brittain & Rey's
"Brittain & Rey's Map of State of California" (Third Edition).

Corp. of Engineers U.S. Army
Date not indicated
Corp. Facilities at Los Angeles and Long Beach.

Metsker—Date Not indicated
Metsker's Map of Los Angeles County.

U. S. Coast and Geodetic Survey
San Diego to San Francisco Bay. Chart 5020, 3rd edition.

## III.

## SANTA MONICA BAY

### A. Special Master's Designation of the Area.

The fourth area designated by the Special Master for adjudication was as follows:

> "4. Segment of Santa Monica Bay (Group (2d)—Chart 5101)
>
> "*United States:* 'The ordinary low-water mark of the Pacific Ocean along the mainland of California, beginning at Point Dume and extending therefrom along the shore to Point Vicente, following the sinuosities of the said low-water mark, except where such low-water mark is interrupted by the mouth of Ballona Creek, at which place the line is a straight line' joining the headlands of Ballona Creek (A/5).
>
> "*California:* Embraced within each of the three alternative propositions stated with reference to segment Group 1(a) above. If, for any reason, it becomes necessary to determine the outer limits of Santa Monica Bay apart from the larger areas of inland waters described in these three propositions, these outer limits should be defined by a line drawn from Point Dume to Point Vicente, as adjudicated by the California Supreme Court in *People v. Stralla,* 14 Cal.2d 617; 96 Pac.2d, 941."
>
> *Report of the Special Master,* May 22, 1951, pp. 42-43.

## B. Physical Description.
## (See Map opposite p. 132.)

### 1. Headlands.

"*Santa Monica Bay* is formed by the curving coast between Point Vicente and Point Dume."

*United States Coast Pilot 7, Pacific Coast,* p. 113, [8th (1959) ed.];

Davidson, *Pacific Coast, Coast Pilot of California, Oregon, and Washington,* p. 46, (4th ed. 1889);

*People v. Stralla,* 14 Cal.2d 617; 96 P.2d 941 (1939).

### 2. Dimensions.

The distance between headlands is 25.2 nautical miles. The maximum depth of the Bay is 10.4 nautical miles. The area of the Bay is 175 square nautical miles.

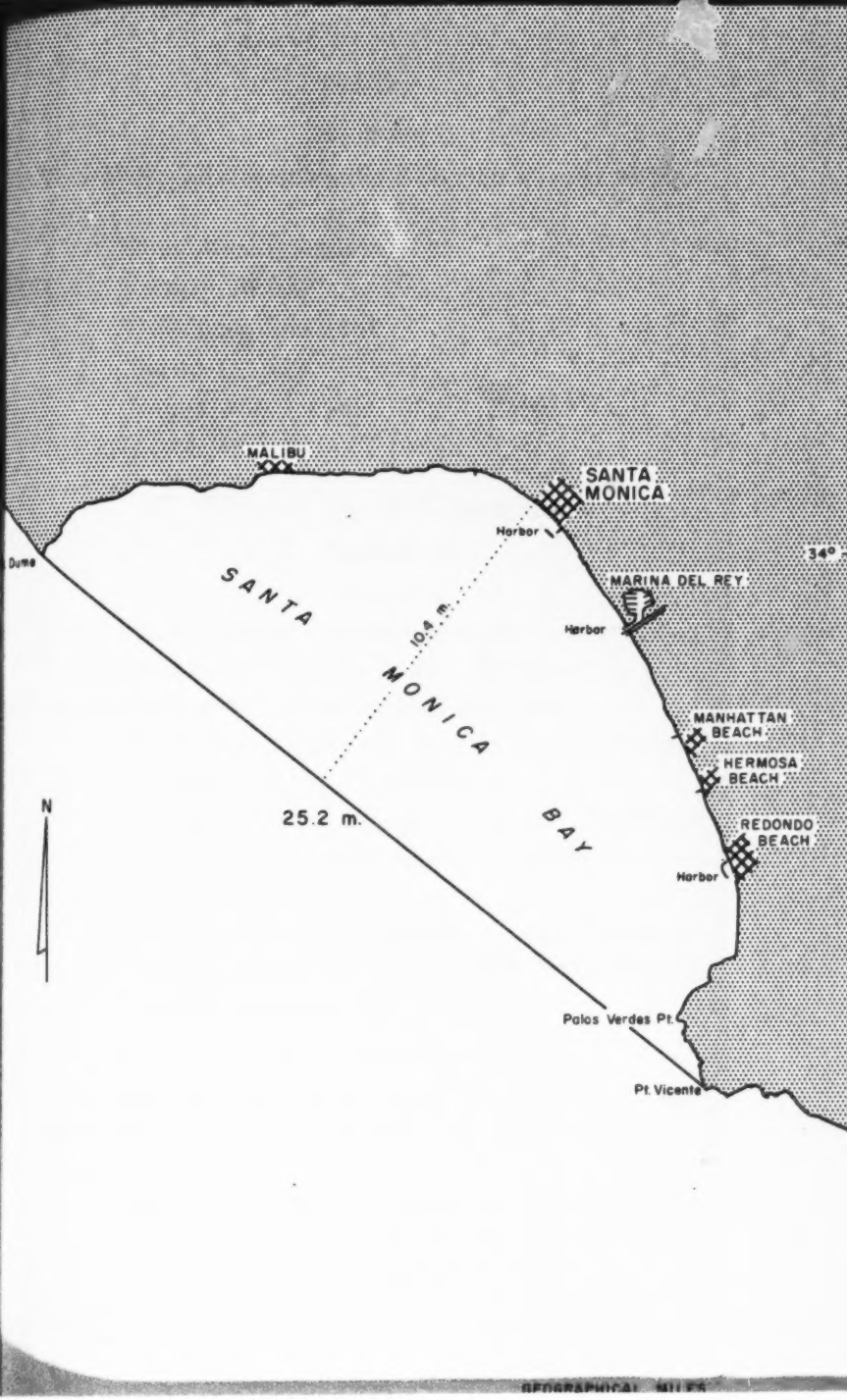
### 3. Protection Afforded by Bay.

"The waters of this bay are, ordinarily, quiet since the force of the waves is broken by the seaward islands and the deep, recessed position of the shoreline."

Ingersoll, *Century History of Santa Monica Bay Cities,* p. 121, (Los Angeles, 1908).

The calmness of the Bay is shown by the fact that a gambling ship, "The Rex," which had no motor power of its own, was anchored within the bay over four miles from nearest land, for a period of five or six years.

*People v. Stralla,* 14 Cal.2d 617, 625; 96 P.2d 941, 944 (1939).




GEOGRAPHICAL MILES

#### 4. Ports.

San Pedro Bay contains the following Ports and Harbors:

a. Santa Monica Harbor.

b. Redondo Beach.

c. El Segundo Roadstead.

d. Marina Del Rey.

*United States Coast Pilot 7 Pacific Coast,* pp. 113-114 [8th (1959) ed].

### C. Historic Use and Recognition.

#### 1. Exploration.

##### a. Cabrillo.

Cabrillo designated the body of water now constituting Santa Monica Bay, the "Gran Ensenada" in 1542, after having anchored in the Bay overnight.

Bancroft's Works, vol. XVIII, *History of California,* vol. I, p. 71 (1884);

Wagner, *Spanish Voyages to the Northwest Coast of America in the Sixteenth Century,* p. 86 (S. F., 1929);

Wagner, *The Cartography of the Northwest Coast of America to the Year 1800,* Vol. II, p. 415 (Berkeley 1937).

##### b. Cermeno

Cermeño in 1595 sailed across Santa Monica Bay describing it as "an ensenada and large bay called Pescadores. . . ."

Wagner, *Spanish Voyages to the Northwest Coast of America in the Sixteenth Century,* p. 372 n 70, (S. F. 1929);

Wagner, *The Cartography of the Northwest Coast of America to the year 1800,* Vol. II, p. 415 (Berkeley 1937).

c. VIZCAINO

During Vizcaino's voyage in 1603, a chart was prepared showing Santa Monica Bay as "Gran Ensenada."

Wagner, *Spanish Voyages to the Northwest Coast of America in the Sixteenth Century,* pp. 235, 402 n 138 (S. F. 1929);

Paullin's Atlas of Historical Geography of the United States, Plate No. 17 (Washington 1932).

d. VANCOUVER

Vancouver, on his voyage down the Pacific Coast in 1793, gave the bay's headlands their present names, describing it in the following manner:

". . . here the coast took a direction S. 67 E., sixteen miles to the north point of *a deep bay,* off which lie two or three small rocks; this point, which I called POINT DUME, bore N. 59 W; the south point of the same bay, being the easternmost part of the main land in sight S. 67 E.; this, being a very conspicuous promontory, I named after Father Vincente; the island of Sta Catalina, (so called by the Spaniards) the easternmost of the group, forming the canal of Sta Barbara, S. 40 E, to S. 19 E.; a small island, called by the Spaniards Sta Barbara, S. 25 W., distant 12 leagues; and the isles of Enneeapah [Anacapa] west, at the same distance. Our situation was before *an extensive bay,* at the distance of about 3

leagues from its nearest shores. These appeared to be compact, and the whole bay to be open and exposed; but our distance from its termination, or bottom, which was nearly 4 leagues, was too great to ascertain any thing respecting it with certainty; and the light prevailing wind, blowing directly on the shore, would not admit of a more minute survey without much retarding our progress along the coast, which had already occupied more time than I wished, or could well spare for its examination; and which on our departure from Monterrey I had expected would ere now have been drawing nearly to a conclusion.

"The nort-hwest [*sic*] side of this bay was observed to be composed chiefly of steep barren cliffs; the north and eastern shores terminated in low sandy beaches, rising with a gradual ascent until they reached the base of a mountainous country, which had the appearance of being rugged and barren, not only at some distance behind the center of the bay, but extending towards the sea coast, and forming its extreme points, viz. point Vincente, and point Dume; which lie from each other S. 51 E., and N. 51 W., 26 miles asunder." (Emphasis added.)

Vancouver, *A Voyage of Discovery to the North Pacific Ocean,* Vol. II, p. 464, (London, 1798).

### 2. Naming of the Bay.

During the Spanish period of California history, the area received the present name of Santa Monica from soldiers on furlough from Los Angeles who were exploring the area.

Ingersoll, *Century History of Santa Monica Bay Cities,* p. 123 (Los Angeles, 1908);

Warren, *History of the Santa Monica Bay Region,* p. 15 (Santa Monica, 1934).

One of the first U. S. Coast Survey maps after California became a member of the Union shows Santa Monica Bay as "Bahia Ona."

"Western Coast of the United States, San Francisco to San Diego," U. S. Coast Survey (1853).

**3. Early Use Demonstrating the Protection Afforded by the Bay.**

"Shoo Fly Landing" on the Bay, at what is now Santa Monica, was used for shipping asphaltum from Rancho La Brea to San Francisco during the years immediately following California's admission to the Union.

Ingersoll, *Century History of Santa Monica Bay Cities,* p. 141 (Los Angeles, 1908);

Gillis, *California—A Guide to the Golden State,* p. 417 (Fed. Writers Project 1939-1954 ed.).

In the early 1850's, a port was located at Saucel Redondo (now Redondo Beach) for shipping salt from the works which were extensively operated there.

Guinn, *A History of California and an Extended History of Los Angeles and Environs,* Vol. I, p. 338 (Los Angeles, 1915);

Ludwig, *History of the Harbor District of Los Angeles,* p. 262 (Los Angeles, 1928).

Trade increased at Redondo with the establishment of Camp Latham in 1861.

Guinn, *A History of California and an Extended History of Los Angeles and Environs,* Vol. I, p. 338 (Los Angeles, 1915);

Ludwig, *History of Harbor District of Los Angeles,* p. 262 (Los Angeles, 1928).

In 1875, with the completion of the railroad from Los Angeles to Santa Monica, a wharf was built 1700 feet out into the Bay and was equipped with a depot and warehouses at its terminus, thus demonstrating that the Bay affords a large degree of protective anchorage without artificial aids.

Ingersoll, *Century History of Santa Monica Bay Cities,* pp. 144-145 (Los Angeles, 1908);

Willard, *The Free Harbor Contest at Los Angeles,* p. 63 (Los Angeles, 1899).

With completion of the wharf in the bay, Los Angeles had two seaports—Santa Monica and Wilmington.

Hittell, *The Commerce and Industries of the Pacific Coast of North America,* p. 29 (S. F. 1882).

Ships customarily used both ports.

Newmark, *Sixty Years in Southern California, 1853-1913,* p. 486 (N. Y., 1926).

In 1887, Port Ballona, formerly Will Tell's Landing, about two-thirds down the bay's shore from Point Dume, was opened as the ocean terminus of the California Central Railroad.

Newmark, *Sixty Years in Southern California, 1853-1913,* p. 581 (N. Y., 1926).

In 1889, the Redondo Railway Company constructed a railroad from Los Angeles to its wharf at Redondo Beach. The Santa Fe Railroad followed suit, constructing another wharf at Redondo in 1890. "By the year 1892, it was computed that over 60 per cent of all water traffic in and out of Los Angeles, if coal and lumber were excluded, was passing by way of Redondo."

Willard, *The Free Harbor Contest at Los Angeles,* p. 64 (Los Angeles, 1899);
Mayo, *Los Angeles,* p. 113 (N. Y., 1933).

Contemporary photographs depict sailing vessels anchored off this wharf despite the absence of artificial protection.

Bartlett, "The Battle for Southern Pacific Ports," *Westways Magazine,* p. 26 (August, 1935).

The Southern Pacific Company, 1892-1893, built a million dollar, 4500 foot wharf into the Bay at the Port of Los Angeles just north of Santa Monica. This was part of an effort to have the harbor for Los Angeles located on Santa Monica Bay.

Ingersoll, *Century History of Santa Monica Bay Cities,* pp. 187, 203 (Los Angeles, 1908);
Willard, *The Free Harbor Contest at Los Angeles,* pp. 61, 66-69 (Los Angeles, 1899);
Newmark, *Sixty Years in Southern California, 1853-1913,* p. 468 (N. Y., 1926);
Bartlett, "The Battle for Southern Pacific Ports," *Westways,* pp. 26-29 (August, 1935);
Warren, *History of the Santa Monica Bay Region,* pp. 54, 61 (Santa Monica, 1934).

With the completion of the wharf at the Port of Los Angeles, considerable trade returned to Santa Monica

Bay. The Pacific Coast Steamship Company made it a port of call.

Guinn, *A History of California and an Extended History of Los Angeles and Environs,* Vol. I, p. 454 (Los Angeles, 1915);

Newmark, *Sixty Years in Southern California, 1853-1913,* p. 486 (N. Y., 1926).

**4. Summary of History of Santa Monica Bay by California Supreme Court.**

The California Supreme Court in summarizing its conclusion that Santa Monica Bay constitutes a bay stated:

> "We conclude that geographically the waters known as Santa Monica Bay conform to the definition of a bay; that historically for a period of at least 400 years they have been known as a bay and during a large portion of that period have been used as a harbor; that the claimed jurisdiction of the executive department of the state is in conformity with the law of nations; therefore, that Santa Monica Bay is one of the bays and harbors included within the territorial boundaries of the state by the Constitution. It follows that the jurisdiction of the state extends over the waters of Santa Monica Bay landward from a line drawn between its headlands, Point Vincente and Point Dume, and at least for a distance of three miles oceanward from that line, and that such jurisdiction may be exercised by the state for all proper purposes including the prosecution of violators of the penal laws of the state."

*People v. Stralla,* 14 Cal. 2d 617, 632-633; 96 P. 2d 941, 948-949 (1939).

**D. Legal Recognition.**

1. *People v. Stralla,* 14 Cal. 2d 617; 96 P. 2d 941 (1939).

2. Amicus curiae brief of federal government filed at direction of U. S. Attorney General in case of *People v. Stralla,* California Supreme Court Case No. Criminal 4227, urging that Santa Monica Bay be recognized as being within California boundaries.

**E. Congressional Documents and Legislation Recognizing This Area as a Bay.**

House Executive Document No. 39, 52d Congress, 1st Session (1891);

House Executive Document No. 41, 52d Congress, 2d Session (1892);

Act of Congress, July 13, 1892, 27 Stats., Ch. 158, pp. 95-96.

**F. Representative Sampling of Maps Designating Area in Question as a Bay.**

Palacios 1603

[Thirty-three small charts of the coast extending from Navidad to Cabo Mendocino.] (Shown as Gran Ensenada)

U. S. Coast Survey 1853

"Western Coast of the United States" (Shown as Bahia Ona)

U. S. Surveyor General 1858

Plat of the Ballona Rancho (No. 434). Note: Shown as "Shallow Water Bay of the Pacific Ocean."

U. S. Coast Survey 1853
Corrected to 1864
Reconnaissance of the Western Coast of the United States. Chart 601. Note: Shown as Bahia Ona.

U. S. Coast Survey 1853
Corrected to 1870
"Reconnaissance of the Western Coast of the United States, Chart 601" (Shown as Bahia Ona)

U. S. Coast Survey 1853
Corrected to 1874
"Reconnaissance of the Western Coast of the United States, Chart 601" (Shown as Bahia Ona)

U. S. Coast Survey 1875
"Sketch J Showing the Progress of the Survey in Section X" (Shown as Monica Bay)

Gibbes, C. E. (Published by Holt) 1876
Map of the States of California and Nevada.

U. S. Coast Survey 1876
"Monica Bay, H1340B"

U. S. Coast Survey 1877
"Coast of California, T1432A"

U. S. Coast Survey 1853 Edition of 1877
"Reconnaissance of the Western Coast of the United States, Chart 601" (Shown as Monica Bay)

U. S. Coast Survey 1875-1878
"Hydrography of Monica Bay, H1341A"

U. S. Coast and Geodetic Survey 1882
Pacific Coast from Santa Monica to Point Conception, including the Santa Barbara Channel.

U. S. Coast Survey 1853
Edition of 1878 Corrected to 1882
"Reconnaissance of the Western Coast of the United States, Chart 601"
(Shown as Monica Bay)

Bancroft 1882
Map of California and Nevada

U.S.G.L.O. 1885
State of California

U. S. Coast and Geodetic Survey 1886
"Landfalls of Cabrillo and Ferrelo"

U. S. Coast and Geodetic Survey 1887
"Port Ballona, T1791"

U. S. Coast and Geodetic Survey 1888
"Pacific Coast from San Diego to Pt. Arena, Chart 601" (Shown as Monica Bay)

U. S. Coast and Geodetic Survey 1889
"Outline Chart, 1889 Coast Pilot" (Shown as Monica Bay)

U. S. Coast and Geodetic Survey 1890
"Pacific Coast from San Diego to Santa Monica, Chart 671" (Shown as Monica Bay)

U.S.G.L.O. 1891
State of California

U. S. Coast and Geodetic Survey 1893
"Santa Monica, H2125" (Portion of)

1897
"Map to Accompany the Minority Report of Richard Price Morgan on the Location of a Deep Water Harbor" (Shown as Monica Bay)

U.S.C. & G.S. 1897
Hydrographic Examination of Santa Monica Bay, Register H-2279

U.S. Coast Survey 1897
"Sketch of the Pacific Coast From San Diego to Pt. Conception Showing Progress of Primary Triangulation"
(Shown as Monica Bay)

Rand McNalley & Co. 1898
"New business Atlas, Map of California"
(Shown as Monica Bay)

U.S. G.L.O. 1900
State of California

Blunt 1901
"Map of California from Monterey to Mexico"

Punnett Brothers 1906
"Sectional Map of Southern California"
(Shown as Monica Bay)

U.S.G.L.O. 1907
State of California

U. S. Coast and Geodetic Survey
1893 Revised 1910
"Santa Monica Bay, T3086"

U. S. Coast and Geodetic Survey 1911
"Pacific Coast from San Diego to Santa Monica, Chart 5100"

Department of the Interior,
General Land Office 1913
"State of California"

U.S.G.L.O. 1928
State of California

Wagner, *Spanish Voyages to the Northwest Coast of America in the Sixteenth Century,* Plate X opposite p. 320 (1929)

Upper California, Chart 1006 Hydrographic Office, U. S. Navy
(Shown as Monica Bay)

U. S. Coast and Geodetic Survey 1930
Santa Monica Bay, Chart 5144.

U. S. Coast and Geodetic Survey 1933
"Kellers Shelter to Pt. Dume, H5390"

U.S. Coast and Geodetic Survey 1933
"Malibu Beach to Point Dume, T4830"

U. S. Coast and Geodetic Survey 1933
"Manhattan Beach, T5235"

U. S. Coast and Geodetic Survey 1933
"Pacific Palisades to Kellers Shelter, H5364"

U. S. Coast and Geodetic Survey 1933
"Pacific Palisades to Malibu Beach, T4829"

U.S.C. & G.S. 1933
Playa del Rey to Pacific Palisades, H-5363.

U. S. Coast and Geodetic Survey 1933
"Point Vincente to Redondo Beach, H5397"

U.S.C. & G.S. 1933-35
Santa Monica Bay, H-5653.

Los Angeles City 1935
County Map of Santa Monica Bay and Adjacent Upland.

Corp. of Engineers U. S. Army 1936
Meanderings of the Rio Hondo, San Gabriel, and Los Angeles Rivers.

U. S. Coast and Geodetic Survey 1939
San Diego to Santa Rosa Island. Chart 5101A.

U.S.N.H.O. 1942
Point Conception to Isla Cedros. HO 5760.

Jones, County Surveyor 1943
Compilation of Tideland Grants.

U.S.G.L.O. 1944
State of California

Corp. of Engineers U. S. Army 1946
Index Map, Playa Del Rey Harbor.

U. S. Coast and Geodetic Survey 1947
San Diego to Santa Rosa Island. Chart 5101, 5th edition.

Corp. of Engineers U. S. Army 1948
Anchorage Grounds, Santa Monica Harbor, California.

Corp. of Engineers U. S. Army 1948
General Plan of Improvement, Redondo Beach Harbor.

Corp. of Engineers U. S. Army 1948
Index Map Redondo Beach Harbor.

Corp. of Engineers U. S. Army 1948
Index Map No. 1. River and Harbor Improvement, Harbor Projects.

U.S.G.S. 1950
Malibu Beach, California 7 ½′ quad.

U.S.G.S. 1950
Point Dume, California 7 ½′ quad.

U.S.G.S. 1950
Venice, California 7 ½′ quad.

Arnold, County Surveyor 1951 (approx.)
Beach and Offshore Profiles. Santa Monica Bay.

Fox, County Surveyor 1951 (approx.)
Beach and Offshore Profiles. Santa Monica Bay.

U.S.G.S. 1951
Long Beach and Vicinity, California.

U.S.G.S. 1951
Redondo Beach, California 7½′ quad.

U. S. Coast and Geodetic Survey 1952
San Diego to San Francisco Bay. Chart 5020, 3rd edition.

U.S.G.S. 1952
Topanga, California 7 ½′ quad.

U.S.G.S. 1953
Los Angeles and Vicinity West.

U.S.B.L.M. 1953
United States including Territories and Insular Possessions.

City of Los Angeles 1956
Ocean Outfall for Affluent Disposal.

U.S.G.S. 1960
State of California, South Half.

U. S. Coast and Geodetic Survey 1961
San Diego to Santa Rosa Island. Chart 5101, 6th edition.

U.S.G.S. 1961
State of California.

## IV

## THE SEGMENT AT CRESCENT CITY

**(See Map opposite p. 148)**

### A. Special Master's Designation of the Area.

The fifth segment designated by the Special Master for adjudication was the Segment at Crescent City. In his Report of May 22, 1951, the Special Master set forth the contentions of the parties relative to that segment as follows:

> "5. The Segment at Crescent City (Group 2(a)—Charts 5702 and 5895)
>
> "*United States:* 'The ordinary low-water mark of the Pacific Ocean along the mainland of California, beginning at Battery Point and extending therefrom in an easterly and southerly direction to the mouth of Cushing Creek, following the sinuosities of the ordinary low water mark, except where such low-water mark is interrupted by the mouth of Elk Creek, at which place the line is a straight line' joining the headlands of Elk Creek (A/4).
>
> "*California:* Waters delimited around St. George Reef by a line drawn from Prince Island off Pyramid Point to Northwest Seal Rock, back to Southwest Seal Rock, thence to Whale Rock, thence to Hump Rock, thence to Star Rock, thence to Castle Rock, thence to White Rock, thence to Steamboat Rock, thence to Round Rock, thence to Sister Rocks, and thence to False Klamath Rock. Alternatively, California states that the line may be drawn from the outermost island or rock off the extremity of Battery Point to Steamboat Rock, thence to Round Rock, and thence to the rocks off

the point between the mouths of Cushing Creek and Nickel Creek. (See Crescent City, Chart 5895, California's Exhibit 2, and California Statutes 1949, Chapter 65)." Report of Special Master, May 21, 1955, p. 43. See also: Report of Special Master, May 31, 1949, pp. 1-2.

## B. Position of California Regarding the Coast Line of the Crescent City Segment.

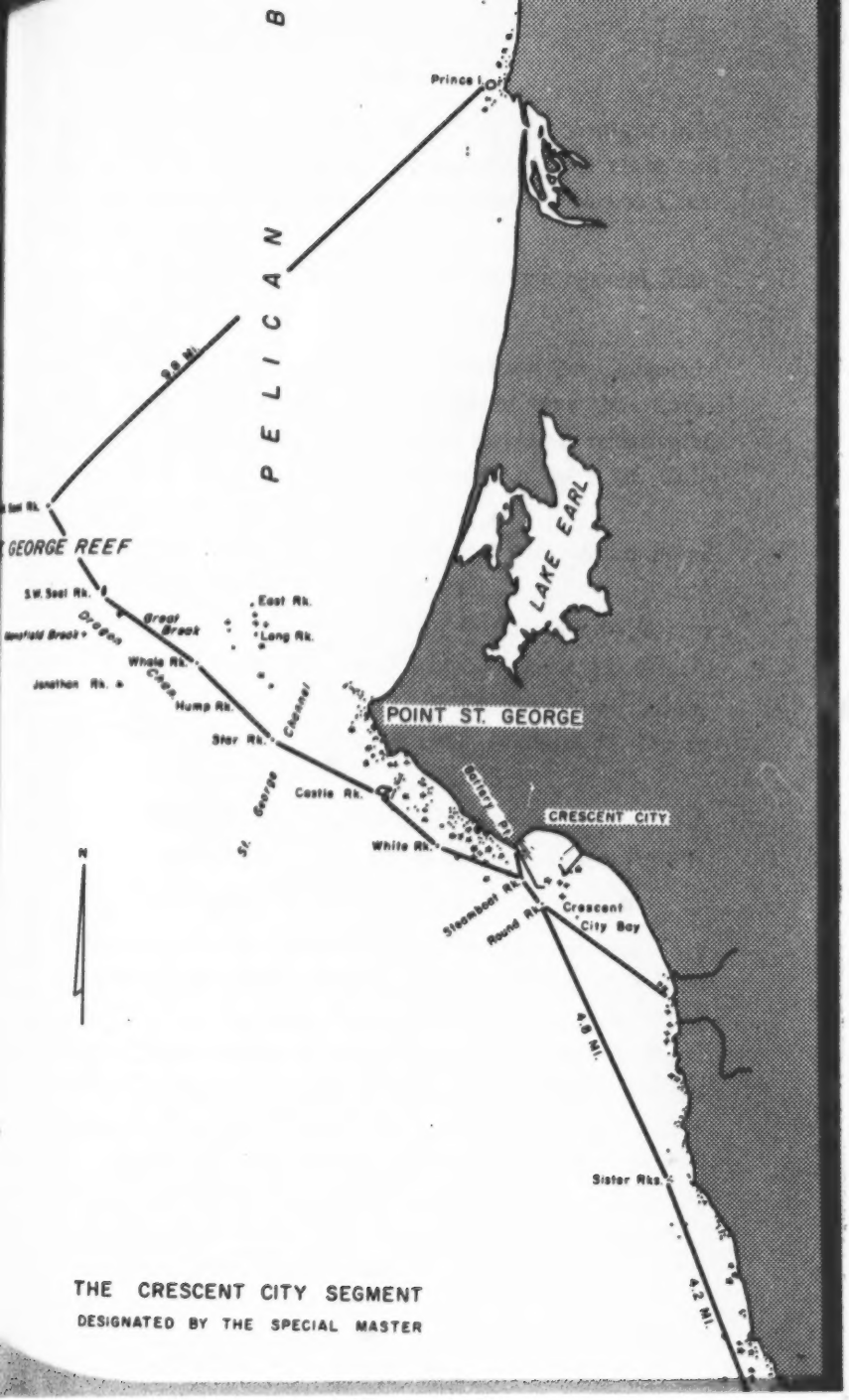
From the foregoing description, it is seen that the Crescent City Segment described by the Special Master includes that portion of California's coastline from False Klamath Rock to Prince Island, and not just Crescent City Bay. Within that segment, two distinct claims of California concerning the delimitation of its boundaries are involved.

The first contention of California concerning the Crescent City Segment is that its coastline along the segment is formed by the outermost islands, rocks, and reefs offlying the mainland. It is the position of California that those outermost points are connected by a series of straight lines to form the coastline from which California's boundaries under its Constitution of 1849 and the Submerged Lands Act are determined.

To support this contention, California cited to the Special Master various texts showing the appropriateness of employing the straight base line method upon such coastline dotted with islands, rocks, and reefs.

> State of California's "CITATION OF DOCUMENTS," *United States v. California,* No. 11, 1949 Term, pp. 568-577.

Professor Manley O. Hudson, California's expert on international law until his death, testified before the




THE CRESCENT CITY SEGMENT
DESIGNATED BY THE SPECIAL MASTER

Special Master concerning the use of the straight base line method in designating the coastline of a state and the particular applicability of that method to the Crescent City Segment.

Transcript of Hearings Before the Special Master, pp. 79-80 (1952).

The second and alternative contention of California concerning the Crescent City Segment was that Crescent City Bay, within the Segment specified, constituted an historic bay and, therefore, was a part of California's inland waters.

*Trial Brief of State of California,* dated April 21, 1949, Exhibits 3 and 4;

*State of California's Brief in Relation to Report of Special Master of May 22, 1951,* pp. 26-27;

*Trial Brief for State of California on Hearing Before Special Master, William H. Davis, February 20, 1952,* pp. 30-33;

*Brief for the State of California in the Proceedings Before the Special Master,* dated June 6, 1952, pp. 86-88.

With regard to California's claim to Crescent City Bay, the United States has conceded that there is a harbor within the segment California asserts is a bay. The United States, however, does not concede that the harbor encompasses the entire Bay as described by California.

*Brief for the United States Before the Special Master* (May, 1952), p. 103;

*Reply Brief for the United States Before the Special Master* (1952), pp. 55-56.

The fact that the Special Master treated the Bay as a harbor as is seen from his comment that:

> "The controversy as to the Crescent City Bay area nine-tenths of a mile deep landward of a line three and one-half miles long (Cal. 86; U.S.R. 55-57) turns on the proper measurement of a harbor rather than on any application of the Boggs formula." *Report of Special Master,* October 14, 1952, p. 26 n19.

California reasserts its primary contention concerning the Crescent City Segment; namely, that where on the coast of California there are islands, rocks, and reefs adjacent to the mainland, the coastline runs around the outermost edge of those islands, rocks, and reefs.

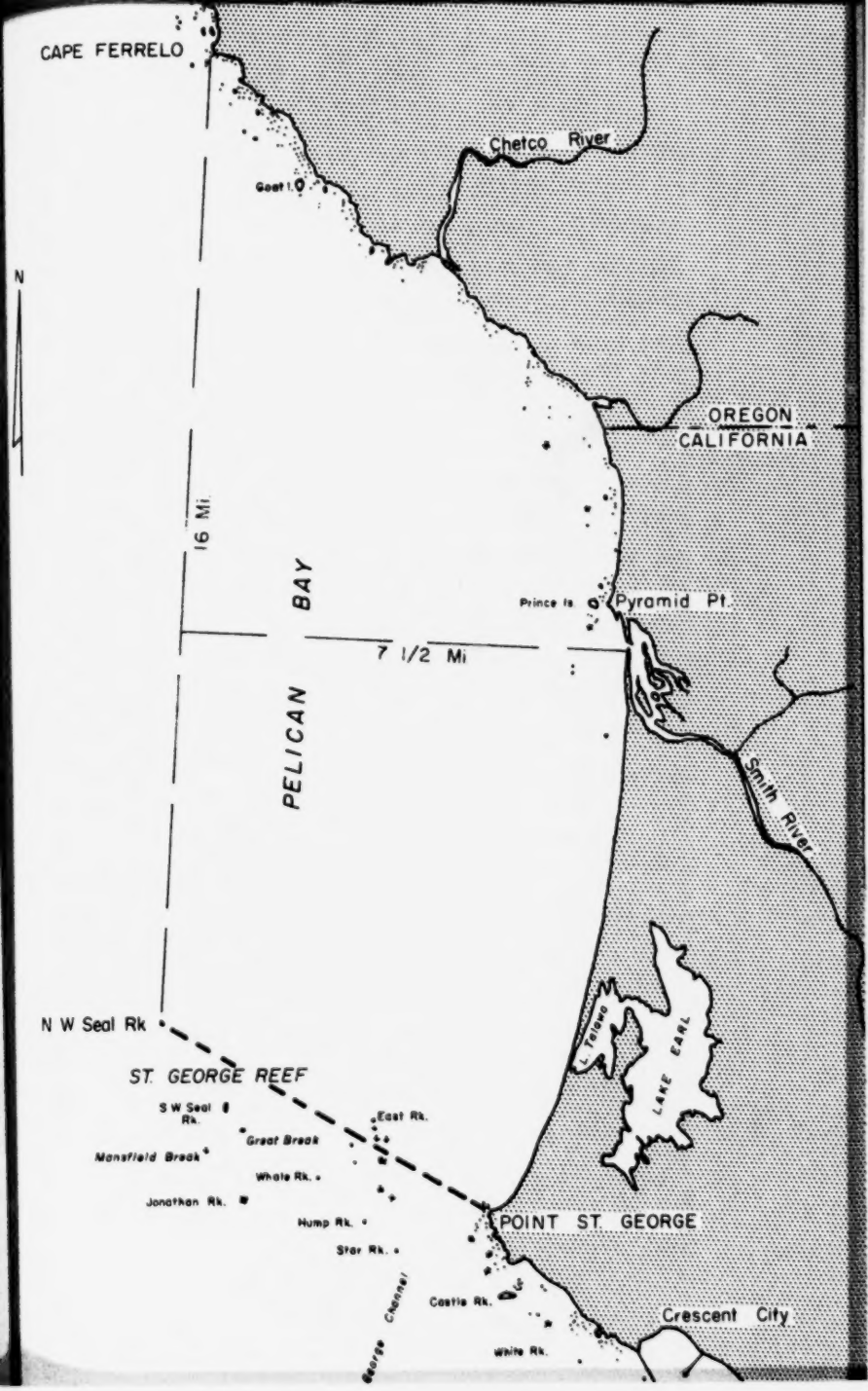
After a re-examination of the prior proceedings herein, California has determined that, in light of the present posture of this case under the Submerged Lands Act and the use of the envelope line in determining the extent of the lands restored to California under that act, there is no longer any dispute as to the area south of Battery Point. (See Brief, *supra,* Sec. I B.)

Before closing, it should be noted that that portion of the Crescent City Segment north of Northwest Seal Rock is but a portion of Pelican Bay (see map opposite p. 150.) which was one of the one-hundred and four segments of the California coast which California requested the Special Master to designate for adjudication.

> *Trial Brief for State of California,* April 21, 1949, Exhibit 1.

The Special Master failed to designate Pelican Bay (as such) as one of the areas to be adjudicated.

> See: *Report of Special Master,* May 22, 1951, pp. 38-44.


CAPE FERRELO
Chetco River
Goat I.
N
OREGON
CALIFORNIA
16 Mi
BAY
PELICAN
Prince Is.
Pyramid Pt.
7 1/2 Mi
Smith River
N W Seal Rk
ST. GEORGE REEF
S W Seal Rk.
East Rk.
Great Break
Mansfield Break
Whale Rk.
Jonathan Rk.
Hump Rk.
Star Rk.
George Channel
Castle Rk.
White Rk.
L. Talawa
LAKE EARL
POINT ST. GEORGE
Crescent City

At a later stage in these proceedings when the status of the entire coast of California is adjudicated, California intends to establish that the portion of Pelican Bay within California's boundaries is a bay included within the provisions of the California Constitution of 1849. The basis of California's contention is most concisely stated in the following quotation:

"PELICAN BAY."

"From Point St. George the coast runs straight for 12 miles N. ½ W.; thence W.NW. for nine miles, forming a deep indentation, called by La Perouse, 1787, Pelican bay, and by Vancouver St. George's bay. On the Coast Survey reconnaissance of it in 1850 it is named Pelican bay."

Davidson, *Directory for the Pacific Coast of the United States,* p. 77 (Wash., 1862).

See also: Vancouver, *A Voyage of Discovery,* Vol. I, p. 202 (London, 1798);

Davidson, *Directory for the Pacific Coast of the United States,* pp. 76-77 (Wash., 1858).

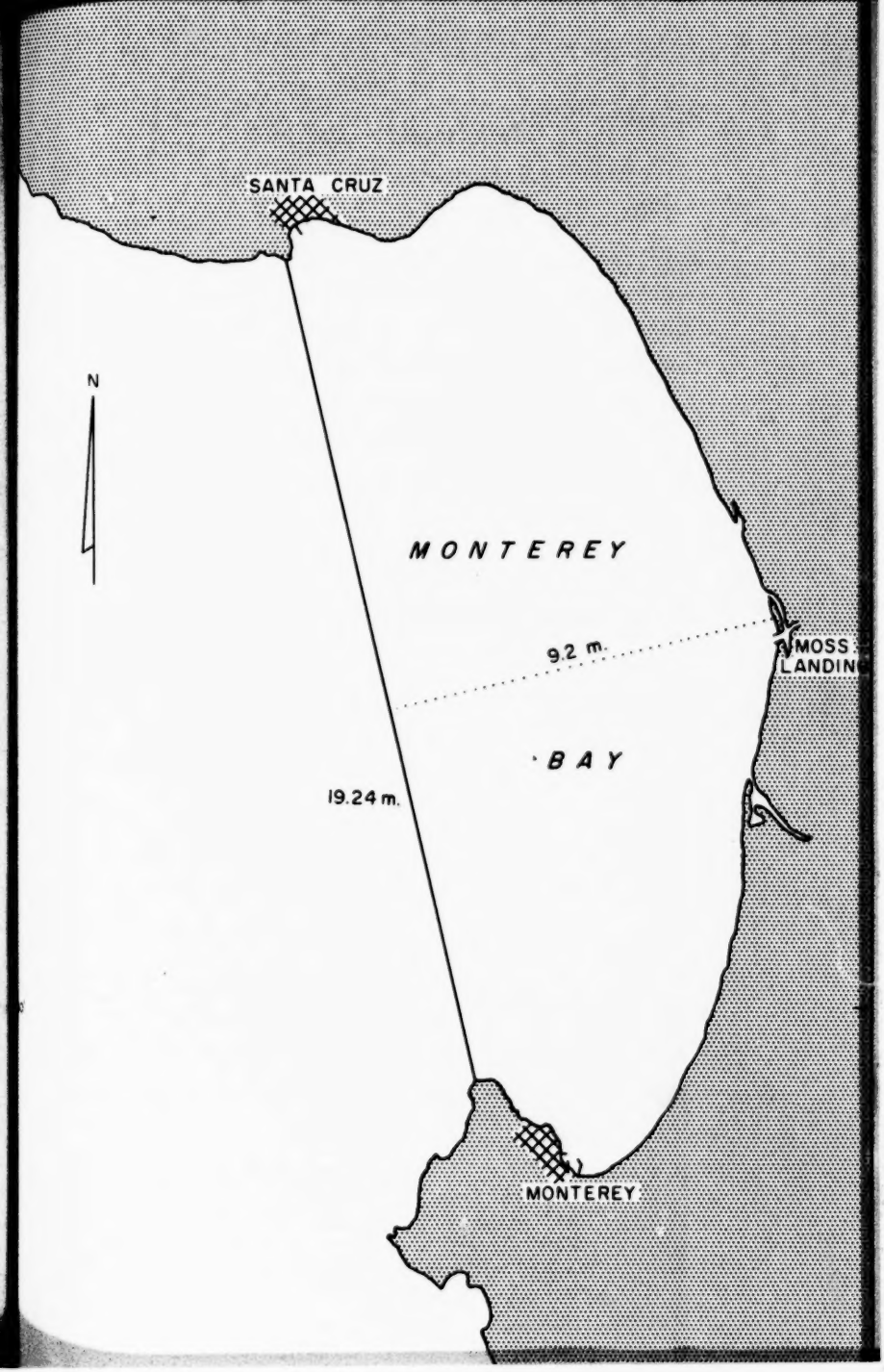
## V

## MONTEREY BAY

### A. Special Master's Designation of Monterey Bay.

The Special Master designated Monterey Bay as the sixth segment for adjudication. His designation of the area was as follows:

> "6. The Segment at Monterey Bay (Group 2(b)—Chart 5402)
>
> "*United States:* 'The ordinary low-water mark of the Pacific Ocean along the mainland of California, beginning at Point Santa Cruz and extending therefrom along the shore to Point Pinos, following the sinuosities of the ordinary low-water mark, except where such low-water mark is interrupted by the mouths of the San Lorenzo River, Soquel Creek, Aptos Creek, Pajaro River, Elkhorn Slough, and Salinas River, at which places the line is a straight line' joining the headlands of all such tributary waterways (A/4).
>
> "*California:* Line drawn from the rocks off Point Santa Cruz to the rocks off Point Pinos (as adjudicated by the California Supreme Court in *Ocean Industries, Inc. v. Superior Court,* 200 Cal. 235; 252 Pac. 722)."
>
> *Report of the Special Master,* May 22, 1951, p. 44.


SANTA CRUZ
N
MONTEREY
9.2 m.
MOSS
LANDIN
BAY
19.24 m.
MONTEREY

## B. Physical Description.

(See Map opposite p. 152.)

### 1. Vancouver's Description of Monterey Bay in 1793.

"This famous Bay is situated between point Pinos and point Anno [sic] Nuevo,[1] lying from each other N. 72 W. and S. 27 E., 22 miles apart. Between these points, this spacious but very open Bay is formed, by the coast falling back from the line of the two points, nearly 4 leagues."

Vancouver, *A Voyage of Discovery,* Vol. II, p. 41 (London, 1798).

### 2. Headlands.

The headlands of Monterey Bay are between Point Santa Cruz and Point Pinos.

*United States Coast Pilot 7, Pacific Coast,* p. 133, [8th (1959) ed.];

*United States Coast Pilot, Pacific Coast,* p. 107, [6th (1942) ed.];

Davidson, *Directory for the Pacific Coast of the United States,* p. 29 (1858 and 1862 editions).

### 3. Dimensions.

The distance between headlands is 19.24 nautical miles. The maximum depth of the Bay is 9.2 nautical miles. Its Area is 159.82 square nautical miles.

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[1]Point Año Nuevo as described by Vancouver is at the point today designated as Point Santa Cruz. Compare "A Chart Shewing part of the Coast of N.W. America With Tracks of His Majesty's Sloop Discovery and Armed Tender Chatham" with U.S.C. & G.S. Chart 5402—"Point Sur to San Francisco."

**4. Qualification as Inland Water Under 1958 Geneva Convention.**

Monterey Bay qualifies as a bay under the semi-circular rule for determining bays set forth in Article 7 of the 1958 Geneva Convention.

**5. Protection Afforded by Bay.**

"The bay is free of dangers, the 10 fathom curve lying at average distance of 0.7 mile offshore. . . . Shelter from north-westerly winds is afforded at Santa Cruz Harbor and Soquel Cove, off the northern shore of the bay, and from southeasterly winds at Monterey Harbor, off the southern shore. Tidal currents are weak."

*United States Coast Pilot 7, Pacific Coast,* p. 133, [8th (1959) ed.];

*United States Coast Pilot, Pacific Coast,* p. 107, [6th (1942) ed.].

Ships going north and south past Monterey Bay would keep well inside the bay to escape the full force of northwesters and heavy seas.

Davidson, *Directory for the Pacific Coast of the United States,* pp. 29, 31 (1858 and 1862 editions).

**6. Ports and Wharves Located on the Bay.**

a. PORTS:

Monterey Harbor
Moss Landing
Santa Cruz Harbor

*United States Coast Pilot, Pacific Coast,* pp. 133-134 [8th (1959) ed.];

*United States Coast Pilot, Pacific Coast,* pp. 107-109 [6th (1942) ed.].

b. WHARVES:

Watsonville

Soquel

Miller's Landing

Pajaro

Millard's point

Aptos Creek (1100 feet in length from low tide mark)

Cronise, *The Natural Wealth of California,* pp. 83-84 (S. F. 1868).

## C. Historic Use and Recognition.

### 1. Cabrillo and Vizcaino.

Monterey Bay was discovered by Cabrillo in 1542 who named it "Bay of Pines." It was renamed Monterey Bay by Vizcaino in 1602.

Davidson, *Directory for the Pacific Coast of the United States,* p. 31 (1858 and 1862 editions);

Wagner, *Spanish Voyages to the Northwest Coast of America in the Sixteenth Century,* pp. 242-245, 248-249 (S.F. 1929);

Wagner, *The Cartography of Northwest Coast of America to the Year 1800,* Vol. I, pp. 111-124, (Berkeley, 1937);

Caughey, *California,* pp. 77-83 (N. Y., 1940).

Two of Vizcaino's charts show Monterey Bay.

Wagner, *Spanish Voyages to the Northwest Coast of America in the Sixteenth Century,* pp. 243, 248 (S. F., 1929).

**2. Other Explorers Who Visited Monterey Bay.**

a. SPANISH:

Cermeño—1595 (Named what is now Monterey Bay, "San Pedro").

Wagner, *The Cartography of the Northwest Coast of America to the Year 1800,* pp. 92, 108 (Berkeley 1937).

Portolá and Serra—1769.

Smith and Teggart, *Diary of Gaspar de Portolá,* pp. 40-43 (Academy of Pacific Coast History Publications, Vol. I, No. 3, Berkeley, 1909);

Miguel Costansó, *Narrative of the Portolá Expedition,* edited by A. van Hemert-Engert and F. J. Teggart, pp. 52-57; inspection in 1770, pp. 62-67 (Academy of Pacific Coast History Publications, Vol. I, No. 4, Berkeley, 1910); [States area so "spacious—like that of Cadiz —deserves rather the name of bay" instead of merely Port of Monterey as Cabrera Bueno had named it (p. 53, *ibid.*)];

Chapman, *History of California,* p. 231 (N. Y. 1928).

de Anza—1776.

Bolton, *Anza's California Expeditions,* Vol. I, pp. 370-376 (Berkeley, 1930).

Malaspina—1784.

Cutter, *Malaspina in California,* pp. 25-53 (S. F. 1960);

Galbraith, "Malaspina's Voyage Around the World," California Historical Society Quarterly, Vol. III, pp. 220-227, 232 (1924).

b. FRENCH:

de la Pérouse—1786.

*Voyage de La Pérouse autour du Monde,* edited by M.L.A. Milet-Mureau, Vol. II, pp. 240-295; Vol. IV, pp. 36-60 (4 Vols., Paris, 1797);

Galbraith, "Malaspina's Voyage Around the World," *California Historical Society Quarterly,* Vol. III, pp. 220-227, 232 (1924);

Chinard, *Le voyage de La Pérouse sur les cotes de l'Alaska et de la California,* pp. 80-108 (Baltimore, 1937).

c. ENGLISH:

Vancouver—1792-1794.

G. Vancouver, *A Voyage of Discovery,* Vol. II, pp. 29-51, 438-442; Vol. III, pp. 321-340 (London 1798);

Bancroft's Works, Vol. XVIII, *History of California,* Vol. I, pp. 510-529 (S. F. 1886).

Beechey—1826-1827.

Beechey described the bay as follows:

"On the last day of the year we passed Punto año nuevo, which with Punto Pinos forms the bay of Monterey. This is a spacious sandy bay about twenty miles across, and according to Pérouse with anchorage near the shore in almost every port."

Beechey, *Narrative of a Voyage to the Pacific and Bering's Strait,* Vol. II, p. 84 (London 1831).

d. AMERICAN:

Dorr—1796.

Guinn, *A History of California and an Extended History of Los Angeles and Environs,* Vol. I, p. 310 (Berkeley 1915);

Ogden, *The California Sea Otter Trade,* pp. 32-33 (Berkeley 1941).

Shaler—1805.

Shaler described the area as follows:

"Monterey is an extensive open bay, in latitude—N., and longitude—W. situated between Point Pinos and Point Año Nuevo, lying from each other No. 72° W. and S. 28° E., 22 miles apart. It is formed by the coast falling back from the line of the two points, nearly four leagues."

Cleland, *History of California,* Appendix B, p. 478 (N.Y. 1930), [First published in the *American Register,* Vol. III (1808)].

**3. Importance During Spanish Period.**

The City of Monterey was California's capitol during the Spanish period. The Spanish government, up to 1821, based its officials at Port of Monterey. Consequently, large numbers of ships visited the area. All supply ships for Alta California stopped there, and Monterey was a port of call for Manila Galleons.

W. L. Schurz, *The Manila Galleon,* pp. 244-246 (N.Y. 1939);

Powers, *Old Monterey,* pp. 3, 36, 50, 65, 69 (Monterey 1934);

Chapman, *History of California, passim* (N.Y. 1928);

Bancroft's Works, Vols. XVIII-XIX, *History of California,* Vols. I, pp. 430, 466-468, and Vol. II, 140-146, 379-383.

Many vessels stopped at Santa Cruz or sent small boats from Monterey across the Bay to Santa Cruz at the northerly end of the bay beginning during the Spanish rule of California due to the lack of fresh water and vegetables in any quantity at Monterey.

Vancouver, *A Voyage of Discovery,* Vol. III, p. 336 (London 1798);

Beechey, *Narrative of a Voyage to the Pacific and Bering's Strait,* Vol. II, p. 85 (London 1831);

Bancroft's Works, Vols. XIX and XX, *History of California,* Vol. II, p. 626; and Vol. III, p. 127 (S.F. 1886).

**4. Use During Mexican Period.**

During Mexican period (1821-1848), Monterey was California's capitol most of time. Monterey was the port of entry for all of California. Considerable trade at Monterey was transacted in hides, soap, tallow, and whaling.

Gillis, *California, A Guide to the Golden State,* pp. 231-232 (Fed. Writer's Project—1939-1954 ed.);

Dana, *Two Years Before the Mast,* pp. 87-89, 92, 103 (N.Y. 1841);

Alfred Robinson, *Life in California,* pp. 7-10, 40 (Oakland 1947) [originally published in 1846 by Wiley and Putnam, New York];

Phelps, *Fore and Aft,* pp. 236, 250-252 (Boston 1871);

Davis, *Sixty Years in California,* pp. 1, 14, 27 (S. F. 1889);

Beechey, *Narrative of a Voyage to the Pacific and Bering's Strait,* Vol. II, pp. 56-61, 84-87 (London 1831);

Belcher, *Narrative of a Voyage Around the World 1836-1842,* Vol. I, pp. 135-137, 320 (London 1843);

M. Duflot de Mofras, *Exploration du territoire de l' Oregon, des Californies et de la Mer Vermeille,* Vol. II, pp. 298-300, 385-387, 395-413 (Paris 1844);

Adele Ogden, "Hides and Tallow: McCulloch, Hartnell and Company," *California Historical Society Quarterly,* Vol. VI, pp. 254-264 (1927);

Adele Ogden, "Boston Hide Droghers along the California Shores," *ibid.,* Vol. VIII, pp. 290-291, 294, 302 (1929);

Adele Ogden, "Alfred Robinson, New England Merchant in Mexican California," and "Business Letters of Alfred Robinson," *California Historical Society Quarterly,* Vol. XXIII, pp. 197, 20 1and pp. 308, 314-315, respectively (1944);

Cleland, *History of California,* pp. 42-45 (N. Y. 1922).

In 1835, Nathan Spear was granted a license from General Gutièrrez to carry produce between Monterey and Santa Cruz in his lighter called the *Nicholás* until the license was revoked because he was a foreigner

rather than a Mexican citizen. Bancroft's Works Vol. XXI, *History of California,* Vol. IV, p. 83 (S. F. 1886).

**5. Use During American Period.**

During the American period trade continued at an increased pace in the Bay. The U. S. Navy based its operations for a time at Monterey and Monterey became a regular steamship stop.

Cleland, *History of California,* pp. 206-208 (N. Y. 1922);

Colton, *Deck and Port,* pp. 385-387, 389 (N. Y. 1850);

Walter Colton, *Three Years in California,* pp. 81, 91 (N. Y. 1851);

Barker, *Memoirs of Elisha Oscar Crosby,* pp. 13-15, 45 (San Marino 1945);

Hittell, *The Commerce and Industry of the Pacific Coast,* pp. 201, 349 (S.F. 1882);

Delkin, *Monterey Peninsula Guide,* pp. 49, 98-99 (Fed. Writers' Project, Palo Alto 1941);

Gillis, *California A Guide to the Golden State,* pp. 230-233 (Fed. Writer's Project, 1939, 1954 ed.);

Colton, *Three Years in California,* pp. 28-29, 33, 72, 91, 98, 138, 373 (Stanford Univ. Press, 1949 ed.; originally published 1850).

The entire Atlantic Fleet of the United States Navy was able to anchor in Monterey Bay without the construction of artificial protection.

Watkins, *Monterey and Santa Cruz Counties,* Vol. I, p. 36 (1925).

Monterey Bay was regarded as being of comparable to San Francisco and San Diego Bays as is seen from a letter dated March 15, 1847, from Brigadier General Kearney to War Department stating: "The Bays of San Francisco, Monterey and San Diego afford excellent harbors, and they should be protected by permanent fortifications."

Senate Document, 31st Congress, 1st Sess., Vol. 9, p. 270 (1849-50).

### D. Legal Recognition.

**1. Cases Holding Monterey Bay to Be a Bay.**

a. *Ocean Industries Inc. v. Superior Court,* 200 Cal. 235, 256 Pac. 722 (1927);

b. *Ocean Industries, Inc. v. Greene,* 15 F.2d 862 (N.D. Cal. 1926).

(It should be noted that Ocean Industries, Inc. was a Nevada corporation against whom California enforced its fishing regulations when the corporation's ship was located more than three miles from any shore.)

**2. International Law Writings Holding Monterey Bay to Be an Example of an Historic Bay.**

a. United Nations Conference on the Law of the Sea—Official Records Volume I: Preparatory Documents 24 February—27 April 1958 (A/Conf. 13/37), pp. 8, 20.

b. P. C. Jessup, *The Law of Territorial Waters and Maritime Jurisdiction,* pp. 428-430 (N.Y. 1927).

c. G. Balladore Pallieri, *Diritto Internazionale Publico,* pp. 377-378, 7th ed. (revised) (1956).

d. H. H. L. Bellot, "Territorial Limits in the Bristol Channel," 9 *British Year Book of International Law* 121, 124 (1928).

### 3. Fish and Game District.

Fish and Game District 17 of California (including Dists. 15 & 16) includes all of Monterey Bay.

California Fish & Game Code—§§11023-11025.

## E. Representative Sampling of Maps Which Have Consistently Designated the Area in Question as Monterey Bay:[2]

Agnese 1556

[Pacific Ocean]. [North America]. [Oval World Map]. (Three MS maps, 43.2 x 26.5, Nos. 1, 4, and 18 respectively, in an atlas of 18 maps, unsigned and undated.)

Homem 1559

Universa ac navigabilis totius terrarum orbis descriptio, cum omnibus portubus ynsulis fluviis, etc.

Ortelius 1587

Americae sive novi orbis, nova descriptio.

Ortelius 1587

Typus orbis terrarum.

Hogenberg 1589

Americae et proximarum regionum orae descriptio.

Hondius 1589

Americae novissima descriptio.

---

[2]Also has been designated as Bahia de los Pinos, San Pedro and Bahia de los Primeros.

Ortelius 1589

Maris Pacifici (quod vulgó Mar del Zur) cum regionibus circumiacentibus, insulisque in eodem passim sparsis, novissima descriptio.

Ortelius 1589

Typus orbis terrarum.

Mazza 1589

Americae et proximarum regionum descriptio.

Molyneux 1592

Terrestrial Globe, 66.5, in diam.

Wytfliet 1597

Limes occidentalis Quivira et Anian.

Anonymous 1600

[World map].

Hondius 1602

Americae novissima descriptio.

Anonymous 1716-1720

[Chart of the North Pacific] MS, 175x70.

Gottlieb 1746

Americae mappa generalis . . . delineata ab Aug. Gottl. Boehmio.

Buache & Delisle 1750

Carte des nouvelles découvertes au nord de la mer du Sud, tant à l'Est de la Siberie et du Kamtchatka, qu' à l'Ouest de la Nouvelle France. Dressée sur les mémoires de Mr. del 'Isle . . . par Philippe Buache.

Delisle 1752

Carte génerale des découvertes de l'Admiral de Fonte et autres navigateurs Espagnols, Anglois et Russes, pour la recherche du Passage a la Mer du Sud.

Buache 1753

Carte des nouvelles découvertes entre la partie orientle. de l' Asie et l'occidle. de l'Amérique . . .

Bellin 1755

Carte de l'Amerique Septentrional depuis le 28 degré de latitude jusqu'au 72 . .

Burriel 1756

Mapa de la America Septentrional Asia Oriental y Mar del Sur intermedio formado sobre las memorias mas recientes y exacts hasta el año 1754.

Jefferys 1761

A map of the N. E. parts of Asia and N. W. parts of America, showing their situation with respect to Japan, taken from a Japanese map of the world brought over by Kaempfer and late in the museum of Sr. Hans Sloane.

Malaspina 1791

"Plano Del Puerto y Bahia De Monte Rey situado in la Cofta de Californs Frabajado á bordo de las Carvetas Descubierta y Atrevida Año 1791"

Vancouver 1798

A Chart Showing part of the "Coast of N. W. America."

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U. S. Coast Survey 1853
"Map of Pajaro River and Vicinity," Register T-442.

U. S. Coast Survey 1853
Corrected to some later date
"Reconnaissance of the Western Coast of the United States, Chart 601."

U. S. Coast Survey 1853
"Western Coast of the United States"

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"Official Map of the State of California By an Act of the Legislature Passed March 25, 1853" (Published by J. H. Colton)

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"Territory of the United States From the Mississippi to the Pacific Ocean"

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Map of a Part of the Coast of California, Map Sheet Northward.

U. S. Coast Survey 1854
Map of Part of the Coast of California from Pajaro River Southward, T-473.

U. S. Coast Survey 1854
Section X, Map of a Part of the Coast of California from Salinas River Southward.

U. S. Coast Survey 1855
"Hydrography of Williams Landing, Register H-505. Portion of.

U. S. Coast and Geodetic Survey 1855
"Hydrography of Sauquel Cove, H504" Portion of.

U. S. Coast Survey 1856
Hydrography of Monterey Bay, Register H-558.

U. S. Coast Survey 1856
"Hydrography of Monterey Bay, Sheet 2 of 3, H560" Portion of.

U. S. Surveyor General 1859
Plat of Aptos Rancho (No. 216).

U. S. Surveyor General 1859
Plat of Shoquel Rancho (No. 215).

Britton & Rey 1860
"Map of State of California" (Third Edition)

U.S.G.L.O. 1860
"Fractional T. 11 S., R. 1 W., M.D.M."

U. S. Surveyor General 1860
Plat of the San Andres Rancho (No. 219).

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U. S. Surveyor General 1861
Plat of the Rancho Rincon de las Salinas (No. 255).

Ransom & Doolittle 1863
New Map of the State of California and Nevada Territory.

U. S. Coast Survey 1853
Corrected to 1864
Reconnaissance of the Western Coast of the United States. Chart 601.

Ransom & Doolittle 1865
"New Map of the State of California and Nevada Territory"

U.S.G.L.O. 1866
"Fractional T. 12 S., R. 1 E., M.D.M."

U. S. Surveyor General 1866
Plat of the Rancho las Salinas (No. 257).

U. S. Surveyor General 1867
Plat of the U. S. Monterey Reservation at Monterey. Portion of.

Ransom & Doolitle 1868
A New Map of the States of California and Nevada.

U. S. Surveyor General 1869
Plat of the City Lands of Monterey (No. 256).

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A New Map of the States of California and Nevada.

U. S. Coast Survey 1853
Corrected to 1870
"Reconnaissance of the Western Coast of the United States, Chart 601"

A. L. Bancroft 1871
Bancroft's Map of California, Nevada, Utah, and Arizona.

State Geological Survey of California 1873
Topographical Map of Central California.

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"Fractional T. 11 S., R. 1 W., M.D.M."

State Geological Survey of California 1874
"Map of California and Nevada"

U. S. Coast Survey 1853
Corrected to 1874
"Reconnaissance of the Western Coast of the United States, Chart 601"

U.S.G.L.O. 1874
"Fractional T. 11 S., R. 2 W., M.D.M. note: Shows division between Pacific Ocean and Monterey Bay to be at easterly line of Refugio Rancho.

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Map of the States of California and Nevada.

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Map of the States of California and Nevada.

U. S. Surveyor General 1876
Plat of the Rancho Punta de los Pinos (No. 279).

U. S. Coast Survey 1853 Edition of 1877
"Reconnaissance of the Western Coast of the United States, Chart 601"

Rand McNally & Co. 1878
"Business Atlas"

U.S.G.L.O. 1879
Plat of Customs House and State House Reservations, Pueblo of Monterey.

U.S.G.L.O. 1879
Plat of the Customhouse and U. S. State House Reservations. Pueblo of Monterey. Portion of.

Colton 1882
California and Nevada.

Bancroft 1882
Map of California and Nevada.

U. S. Coast Survey 1853 Edition of 1878
Corrected to 1882
"Reconnaissance of the Western Coast of the United States, Chart 601"

U.S.G.L.O. 1885
State of California

U. S. Coast and Geodetic Survey 1886
"Landfalls of Cabrillo and Ferrelo"

U. S. Coast and Geodetic Survey 1888
"Pacific Coast From San Diego to Pt. Arena"

U. S. Coast and Geodetic Survey 1889
"Outline Chart, 1889 Coast Pilot"

U. S. Surveyor General 1890.
Plat of the City Lands of Monterey. Portion of.

U. S. Surveyor General 1891
Plat of the City Lands of Monterey (No. 256).

U.S.G.L.O. 1891
State of California

U.S.G.L.O. 1891
"Fractional T. 11 S., R. 1 W., M.D.M."

Rand McNally & Co. 1898
"New Business Atlas, Map of California"

U.S.G.L.O. 1900
State of California

Blunt 1901
"Map of California From Monterey to Mexico"

U.S.G.L.O. 1907
State of California

Corp. of Engineers U. S. Army 1909
Map showing Moss Landing and its vicinity contiguous to Monterey Bay. Portion of.

U. S. Coast and Geodetic Survey 1910
"Monterey Bay, T442" Portion of.

U. S. Coast and Geodetic Survey 1910
Monterey Bay, T-473A.

U. S. Coast and Geodetic Survey 1910
Monterey and Vicinity. T3069A. Note: Shows Monterey Harbor. Portion of.

U. S. Coast and Geodetic Survey 1910
Monterey Bay between Monterey and Salinas River. T. 554A. Portion of.

Hare, County Surveyor 1912
Map of Survey for Oyster Bed Location. Portion of.

U.S.G.S. 1912
Capitola, California, 15′ quad. Portion of.

Department of the Interior, General Land Office—1913
"State of California"

Hare, Surveyor 1914
Map of Survey of the Boundary of the Lands of Robert Warnock. Portion of.

U.S.G.S. 1914
San Francisco Bay North, J 10.

Cozzens, County Surveyor 1922
Assessor's Plats of Bolsa Nueva y Moro Cojo Rancho.

Severance, C. E. 1926
Map of the City of Monterey. Portion of.

U. S. Coast and Geodetic Survey 1926
Monterey Bay. Chart 5403.

U.S.G.L.O. 1928
State of California

Corp. of Engineers U. S. Army 1928
Resurvey of Monterey Harbor, California. Portion of.

Wagner, *Spanish Voyages to the Northwest Coast of America in the Sixteenth Century,* Plate X opposite p. 320 (1929)
Upper California, Chart 1006, Hydrographic Office, U. S. Navy.

U. S. Coast and Geodetic Survey 1930
Progress Sketch, First and Second Order, Triangulation.

U. S. Coast and Geodetic Survey 1931
Point Sur to San Francisco. Chart 5402.

Corp. of Engineers U. S. Army 1932
Monterey Harbor, California.

Cozzens and Davies, Surveyors 1932
Land of Ed C. Vierra. Portion of.

U. S. Coast and Geodetic Survey 1933
Cyprus Point to Point Pinos, H-5414.

U. S. Coast and Geodetic Survey 1933
"Monterey Bay, T4787" Portion of.

U. S. Coast and Geodetic Survey 1933
Monterey Bay. T4790. Portion of.

U. S. Coast and Geodetic Survey 1933
"Monterey Bay," T-4788.

U. S. Coast and Geodetic Survey 1933
Monterey Bay. T4789. Portion of.

U. S. Coast and Geodetic Survey 1933
Monterey Harbor. H5415. Note: Shows Monterey Harbor. Portion of.

U. S. Coast and Geodetic Survey 1933
Salinas River to Elkhorn Slough, H-5406.

U. S. Coast and Geodetic Survey 1933
Soquel Cove, H-5493.

U. S. Coast and Geodetic Survey 1933
South of Salinas River, H-5412.

Corp. of Engineers U. S. Army 1934
Monterey Harbor, California. Portion of.

Cozzens, Boling and Fontain, R. C. E. 1935
Survey for suit to quiet title. Portion of.

Source not shown 1938
Map of Rancho El Pescadero and Eunta Pinos. Portion of.

Severance, C. E. 1938
Record of Survey of Customhouse Reservation, City of Monterey. Portion of.

Corp. of Engineers U. S. Army 1939
Monterey Harbor, California. Portion of.

U. S. Coast and Geodetic Survey 1941
Point Sur to San Francisco. Chart 5402, 7th edition.

County Assessor 1942
Assessor's Subdivision of Lot A.

Corp. of Engineers U. S. Army 1943
Monterey Bay, California Drainage Basin, Moss Landing Lagoon.

U.S.D.A., S.C.S. 1942
Topographic map. Elkhorn Slough.

Corp. of Engineers U. S. Army 1943
Monterey Bay, California. Plat of Improvement. Moss Landing Harbor and Drainage Development.

Corp. of Engineers U. S. Army 1943
Monterey Bay, California Plan of Improvement, Moss Landing Harbor and Drainage Development.

Monterey County Surveyors, Inc. 1943
Sand Holdt Property under lease by Parr—Moss Landing Terminal Company. Portion of.

U.S.G.L.O. 1944
State of California

Corp. of Engineers U. S. Army 1944
Moss Landing, Monterey Bay, California.

Brunnier, Engineer 1945
Moss Landing Harbor Project. Portion of.

Corp. of Engineers U. S. Army 1945
Moss Landing, California. Topography proposed harbor site.

Corp. of Engineers U. S. Army 1945
Proposed Development for Monterey Harbor.

Corp. of Engineers U. S. Army 1946
Fort Ord and Vicinity, California.

Corp. of Engineers U. S. Army 1946
Survey Report Playa Del Rey Harbor. Tributary area. Note: Map reproduced by courtesy of the Automobile Club of Southern California.

Monterey County Planning Commission 1946
Map of Asilomar Beach.

AMS 1947
Monterey, California, Sheet 1657 III SW, Series V895.

AMS 1947
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Severance, C. E. 1947
Map of the City of Monterey.

U. S. Coast and Geodetic Survey 1947
San Diego to Point St. George. Chart 5002, 11th edition.

U.S.G.S. 1947
Marina, California, 7 ½′ quad. Portion of.

U.S.G.S. 1947
Monterey, California, 15′ quad. Portion of.

Corp. of Engineers U. S. Army 1948
Monterey Harbor, California. Conditions on 30 June 1948.

Corp. of Engineers U. S. Army 1948
Monterey Harbor Condition, Survey of 6-12, February, 1948.

Severance, C. E. 1948
Map of the City of Monterey.

U. S. Coast and Geodetic Survey 1948
Monterey Bay. Chart 5403, 8th edition.

U. S. Coast and Geodetic Survey 1948
Monterey Bay to Coose Bay. 1st edition.

Corp. of Engineers U. S. Army 1951
Flood Control, Salinas River, California. Condition of Improvement 30 June 1951.

Corp. of Engineers U. S. Army 1951
Monterey Harbor, California. Condition of Improvement 30 June 1951.

Corp. of Engineers U. S. Army 1951
Moss Landing Harbor, California. Condition of Improvement 30 June 1951.

U. S. Coast and Geodetic Survey 1952
San Diego to San Francisco Bay. Chart 5020, 3rd edition.

U.S.B.L.M. 1953
United States Including Territories and Insular Possessions.

U.S.G.S. 1954
Moss Landing, California, 7 ½′ quad.

U.S.G.S. 1954
Santa Cruz, California, 7 ½′ quad. Portion of.

U.S.G.S. 1954
Soquel, California, 7 ½′ quad.

U.S.G.S. 1954
Watsonville West, California, 7½′ quad.

Rand McNally & Co. 1958
California.

U. S. Coast and Geodetic Survey 1959
Monterey Bay to Coose Bay. Chart 5021, 2nd edition.

Monterey County Surveyors, Inc. 1960
Record of Survey of Agreed Property Lines Along Elkhorn Slough.

U.S.G.S. 1960
State of California, South half.

U.S.G.S. 1961
State of California.

State Lands Commission 1961
State Water Bottoms shellfish culture.

U. S. Coast and Geodetic Survey 1962
Point Sur to San Francisco. Chart 5402, 8th edition.

U. S. Coast and Geodetic Survey 1963
San Diego to Aleutian Islands and Hawaiian Arch. Chart 9000, 10th edition.

U.S.N.H.O. 1939
Revised 1963
Gulf of St. Lawrence to Strait of Juan de Fuca. HO 526, 13th edition.

U.S.N.H.O. 1963
Plotting Chart, Pacific Yacht Races. Chart 16377-S, 3rd edition.

Britton & Rey
Date not indicated.
Map of the State of California.

Cozzens, County Surveyor
Date not indicated.
Assessor's Plat.

Metsker
Date not indicated.
Metsker's Map of Monterey County.

Ohman Company
Date not indicated.
New Relief Map of the United States.

Severance, C. E.
Date not indicated.
Map of the City of Monterey. Portion of.

Thomas Bros.
Date not indicated.
Map of Santa Cruz County.

Source not shown.
Date not indicated.
Map of Pacific Grove Voting Precincts.

## VI

## SAN LUIS OBISPO BAY

### A. Special Master's Designation of the Area.

The last area designated for adjudication by the Special Master was as follows:

"7. Segment of San Luis Obispo (Group 2(c) —Charts 5302 and 5386)

"*United States:* 'The ordinary low-water mark of the Pacific Ocean along the mainland of California, beginning at Point San Luis and extending therefrom along the shore in an easterly direction, following the sinuosities of the ordinary low-water mark, except where such low-water mark is interrupted by the mouth of San Luis Obispo Creek, at which place the line is a straight line' joining the headlands of such tributary waterway (A/5).

"*California:* Line drawn from the extreme point of Point San Luis to the extremity of Point Sal (see San Luis Obispo Bay, Chart 5386, California's Exhibit 4)." Special Master's Report of May 22, 1951, p. 44. See also: Special Master's Report of May 31, 1949, pp. 1-3.

### B. Position of California Regarding San Luis Obispo Bay.

California maintains that San Luis Obispo Bay from Point San Luis to Point Sal is one of the Bays included within the meaning of California's Constitution of 1849, since it was generally recognized as a Bay as of that time.

The United States in the Briefs filed with the Special Master in 1952, conceded that there was a harbor

at the north end of the bay which constituted inland waters of California.

Brief for the United States—Before the Special Master, pp. 103, 107 (1952);

Reply Brief for the United States Before the Special Master, pp. 57-59 (1952).

## C. Physical Description of San Luis Obispo Bay (See Map opposite p. 180.)

### 1. Headlands.

The headlands are historically described as Point San Luis and Point Sal.

Vancouver, *A Voyage of Discovery,* Vol. II, pp. 446-447 (London 1798);

Y. A. Storke, *A Memorial and Biographical History of the Counties of Santa Barbara, San Luis Obispo and Ventura, California,* p. 125 (Chicago 1891).

### 2. Dimensions.

The distance between these headlands is 16 nautical miles. The maximum depth of the Bay is 5.3 nautical miles. The area of the Bay is 58 square nautical miles.

## D. Historical Exploration, Descriptions, Designations, and Use of the Bay Prior to 1849.

### 1. Exploration.

#### a. Vizcaino

A map drawn on Vizcaino's expedition up the California Coast in 1602 shows San Luis Obispo Bay, from the location later named Point Sal to Point San

AVILA BEACH
SHELL BEACH
PISMO BEACH
Pt.
San Luis
SAN LUIS OBISPO BAY
5.3 m.
16 m.
N
Pt. Sal

Luis. The Bay was designated as "Ensenada de Abrigo," or "Closed Bay."

Wagner, *Spanish Voyages to the Northwest Coast of America in the Sixteenth Century,* p. 241 (S. F. 1929);

Wagner, *Cartography of the Northwest Coast of America to the Year 1800,* Vol. II, p. 411 (Berkeley 1937).

### b. Vancouver

George Vancouver gave Point Sal its name and described the bay as "an extensive bay" with headlands "20 miles asunder," and described Point Sal as the southerly terminus.

G. Vancouver, *A Voyage of Discovery,* Vol. II, pp. 446-447 (London 1798).

### c. De Mofras

In 1844, shortly before California's Constitutional Convention of 1849, De Mofras gave the following description of San Luis Obispo Bay:

"The anchorage of San Luis is 3 miles from the mission. . . . Mooring may be had inside *a large bay,* 8 miles broad, *which is bounded on the south by Point Sal and on the north by Point San Luis,* where El Buchon looms." (Emphasis added.) Duflot de Mofras' *Travels on the Pacific Coast* v. I, p. 200 [Paris, 1844 translated and edited by Marguerite Eyer Wilbur (Santa Ana, 1937).]

**2. Source of Name.**

The bay takes its present name from the Mission of San Luis Obispo founded September 1, 1772.

Wagner, *Cartography of the Northwest Coast of America to the Year 1800,* vol. II, p. 411 (Berkeley, 1937).

**3. Use and Regulation Under Spanish and Mexican Dominion.**

In the early 1800's, San Luis Obispo Bay was used for the shipment of hides from Missions San Luis Obispo and San Miguel.

A. Ogden, "Hides and Tallow, McCulloch, Hartnell and Company," *California Historical Society Quarterly,* vol. VI, p. 257 (1927).

New England traders ignored Spanish law forbidding trade with foreign countries, and exchanged American manufactured goods for hides, tallow and poultry of the San Luis Obispo Mission settlement at Smuggler's Landing on San Luis Obispo Bay.

C. N. Jesperson, *History of San Luis Obispo County,* p. 113 (Harold McLean, n.p. 1939).

In 1814, the American ship *Pedlar* was seized by the Spanish merchant ship *Tagle* at San Luis Obispo Bay and taken to Santa Barbara.

A. Ogden, *The California Sea Otter Trade 1784-1848,* pp. 70-71 (Berkeley, 1941).

In 1827, a decree of the Mexican Government allowed foreign vessels to stop at the harbor in San Luis Obispo Bay, along with other harbors along the coast.

Bancrofts Works, Vol. XX, *History of California,* vol. III, p. 127 (S. F. 1886).

Numerous ships stopped at San Luis Obispo Bay to transact trade and obtain supplies between 1800-1848.

A. Ogden, *The California Sea Otter Trade 1784-1848,* pp. 42-43, 52, 55, 67-68, 71, 75, 89 (Berkeley, 1941).

## E. Historic Descriptions and Designations, of the Bay After 1849 Confirming Prior Assertions Concerning the Extent of the Bay.

### 1. California's Position as to Correct Description of San Luis Obispo Bay.

It is California's position that after 1849, authorities confused the San Luis Obispo Harbor with San Luis Obispo Bay itself. As shown above, the true historic headlands were Point San Luis and Point Sal, and in fact the harbor constitutes only the northerly portion of the Bay. In 1852, a map of the Harbor of San Luis Obispo was prepared and printed by the United States Coast Survey. This map designates area as "the San Luis Obispo *Harbor.*" (Emphasis added.)

U. S. Coast Survey, *Reconnaissance of the Harbors of Santa Cruz, San Simeon, Coxo, and San Luis Obispo, California* (1852).[1]

Following publication of that map, there were conflicting designations as to the extent of the Bay, some maps recognizing only the harbor as the Bay, while others continued to show the Bay extending to Point Sal. It should be noted that harbors and bays were classified separately by the United States Coast Survey. *Report*

[1]The first Coast Pilots and early Directories do not designate the southerly headland of San Luis Obispo Bay. Davidson, *Directory for the Pacific Coast of the United States, Reported to the Superintendent of the U. S. Coast Survey* p. 25 (1858); p. 25 (1862).

of *the Superintendent of the Coast Survey Showing the Progress of the Survey During the Year 1856,* Sen. Doc. No. 12, 34th Cong., 3d Sess., Appendix No. 6, pp. 106-107 (Wash. 1856). (See list of maps, *infra,* pp. 187-189.)

> "The first division is usually called the Pismo Beach [that portion commencing at Point Sal and running northerly], and opposite the Pismo Rancho a wharf was constructed, in 1861, extending through the surf to deep water, affording a convenient landing for steamers and sailing vessels. In olden times, and up to the period when wharves were built, landings were effected in fair weather in small boats, and with lines through the surf on the broad sand beach. Thus, it was an independent harbor, and a rather inconvenient one, and the increasing business of later years demanded the construction of a wharf, which has proven of great benefit to the agricultural interests of the neighboring country.
>
> "The second division comprises the semicircle sweeping around to the west, including the Avila Beach and Point San Luis. This section makes the harbor of San Luis Obispo. . . . At a place called Cave Landing, a small wharf was built in 1860, where small boats and lighters brought passengers and goods, and in 1869 a larger one called People's Wharf was built at the Avila Beach, where steamers and vessels could fasten and discharge and receive cargo. This was exposed to the beating waves. . . . Observing this, Mr. John Harford and others determined to make there a landing, and so quarried a way for a railroad, and built a wharf to deep water, making Port

Harford. Work upon this was commenced in 1872, and so far completed in 1873 as to receive shipping and transport goods over the railroad, operated by horses, to a point accessible to teams, a distance of about two miles."

M. Angel, *History of San Luis Obispo County,* p. 322 (Oakland, 1883).

California writers after 1849 continued to describe the Bay as being between Point San Luis and Point Sal.

"The coast of San Luis Obispo is divided into two distinct features lying between Point Sal (so named by Vancouver in 1793, after Capt. Hermenegildo Sal, the Commandante of the presidio of Monterey [San Francisco]) in Santa Barbara County, on the south, and Piedras Blancas on the north. The first division *extends from Point Sal to Point San Luis, making such an indentation as to form San Luis Obispo Bay.*

* * *

"From Point Sal to Point San Luis the distance is about seventeen miles, in a north-northwesterly direction. The course of the beach is slightly east of north for about fifteen miles, then curves around to the northwest, west, south, and southeast in a line of ten miles, making the indentation known as the *bay of San Luis Obispo.*" (Emphasis added.)

M. Angel, *History of San Luis Obispo County,* p. 322 (Oakland, 1883).

"The coast of this country has a natural division into two distinct sections, one of which extends from Point Sal, in Santa Barbara County on the

south, to Point San Luis on the north. This division is an indentation called San Luis Obispo Bay; north of Point Sal the mountains fall back, and the shore is formed of sand-hills. The general trend is north, until the coast commences sweeping westward to form the bay of San Luis Obispo, and the shores become high and abrupt. From Point Sal to Point San Luis the distance is about seventeen miles in a northwesterly direction, the beach running somewhat east of north for about fifteen miles, when it curves to the northwest, west, south, and southeast, in a line of ten miles, forming San Luis Obispo Bay."

Y. A. Storke, *A Memorial and Biographical History of the Counties of Santa Barbara, San Luis Obispo, and Ventura, California,* p. 127 (Chicago, 1891).

## F. Use of the Bay Shortly After 1849

### 1. Appointment of Harbor Master in 1850.

Of significance is the fact that trade was of sufficient magnitude prior to 1850 at San Luis Obispo Bay that three months after the first election held by the County of San Luis Obispo, on April 14, 1850, William Stenner was appointed Harbor Master.

W. W. Robinson, *The Story of San Luis Obispo County,* p. 17 (L. A., 1957).

### 2. Early Importance of San Luis Obispo Bay.

Until the railroad connected San Luis Obispo with San Francisco in 1894, San Luis Obispo Bay was the primary link for communication and trade for the sur-

rounding area with the rest of the world. Numerous ships made regular stops at the bay.

C. N. Jesperson, *History of San Luis Obispo County*, pp. 113-119 (Harold McLean, N. P. 1939);

W. W. Robinson, *The Story of San Luis Obispo*, p. 45 (L. A., 1957).

## G. Representative Sampling of Maps Showing San Luis Obispo Bay:[2]

### 1. Showing Headlands at Point San Luis and Point Sal.

Palacios 1603

33 small charts of the coast extending from Navidad to Cape Mendocino.

Anonymous 1802

Carta esferica de los reconocimentos hechos en la costa N.O. de America en 1791 y 92 por las goletas sutil y Mexicana y otros buques de S.M.

Imray 1853

Coast of California

Ransom & Doolittle 1865

Map of the State of California and Nevada Territory.

U. S. Surveyor General 1872

Fractional Township No. 32 South, Range No. 12 East, M.D.M.

Rand-McNally and Company 1878

Business Atlas.

U.S.G.L.O. 1891

State of California.

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[2]Sometimes designated as "Ensenada de Abrigo."

Blunt 1901
Map of California from Monterey to Mexico.

U. S. Navy Hydrographic Office
Revised 8/12/63
Gulf of St. Lawrence to Strait of Juan de Fuca H.O. 526. 13th Ed.

**2. Showing Southerly Headland Other Than at Point Sal.**

U. S. Surveyor General 1873
Plat of the Rancho San Miguelito.
1892
*The Pacific Coast and the World* (Int. Lib. Assn. S.F. 1892)

U.S.G.L.O. 1900
State of California.

U.S.G.L.O. 1907
State of California.

Pacific Coast Railroad Company 1916
State Board of Equalization Land Identification Map.

U.S.C. & G.S. 1925
Los Padres National Forest.

U.S.G.L.O. 1928
State of California

Union Oil Company of California 1932
Port San Luis Ship Loading Plant.

U.S.C. & G.S. 1934
San Luis Obispo Bay H5772.

U.S.C. & G.S. 1937
San Luis Obispo Bay and Approaches 5th edition.

U.S.C. & G.S. 1939
San Francisco Sectional Aeronautical Chart.

Pacific Coast Railroad Company 1942
Properties of Port San Luis Transportation Company in S.L.O. County.

U.S.G.L.O. 1944
State of California

U.S.G.S. 1951
Port San Luis, California, 15′ quad.

U.S.G.S. 1952
Arroyo Grande, California, 15′ quad.

Porter, Urquhart, McCreary & O'Brien 1959
Port San Luis Harbor District.

Metsker
Date not shown.
San Luis Obispo County.

U.S.C. & G.S. 1941 revised 1962
Point Conception to Point Sur, Chart 5302. 3rd edition.

## APPENDIX C

I.

Disturnell Map.

II.

Alexander S. Taylor Map.

MAP IS TOO LARGE TO BE FILMED

MAP IS TOO LARGE TO BE FILMED